

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

SITING COMMITTEE WORKSHOP

In the Matter of:)
)
Examining Critical Issues in) Docket 00-SIT-2
the Licensing of Thermal)
Power Plants and Related)
Facilities)

HEARING ROOM A

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

Robert Pernell, Associate Member

Scott Tomashefsky, Commissioner Advisor

Ellen Townsend-Smith, Commissioner Advisor

STAFF PRESENT

Bill Chamberlain, Chief Counsel

Chris Tooker

David Maul

Matt Layton

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1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Ladies and
3 gentlemen, good morning, and welcome to our
4 workshop on the issue of Air Emission Offsets and
5 Availability.

6 My name is Robert Laurie, Commissioner
7 at the California Energy Commission. I have the
8 pleasure of serving as Presiding Member of the
9 Commission's Licensing Committee. To my right is
10 my colleague and partner on the Committee,
11 Commissioner Robert Pernell. And to Commissioner
12 Pernell's right is Commissioner Pernell's Advisor,
13 Ellie Townsend-Smith.

14 A little bit of background as to our
15 purpose for gathering here today. The Commission
16 has determined that in our licensing process we
17 have determined that potential barriers exist to
18 the future licensing of power plants, and we have
19 determined to study those potential barriers.
20 Those barriers include air emission standards and
21 availability of offsets; gas constraints;
22 transmission constraints; water constraints; local
23 opposition issues. We will not touch upon in this
24 report, but certainly the status of the market is
25 a major issue that will determine whether we do or

1 do not have adequate power.

2 So this is the third in a series of
3 workshops. The Committee will issue a report to
4 the full Commission, hopefully in April, that will
5 summarize our findings on these barriers and
6 determine whether, in fact, the barriers are real,
7 and if so, what our recommendations may be to deal
8 with such.

9 So we're very pleased today to deal with
10 the important question of air emission standards,
11 what they are, what the offset program is, how we
12 deal with it, whether they're available, and how
13 it all might affect the ability to put electrons
14 on the wires in the future.

15 Commissioner Pernell, do you have any
16 thoughts you'd like to convey at this time?

17 COMMISSIONER PERNELL: I'd just -- just
18 like to say good morning, welcome. And this
19 workshop will be very informative, so we expect
20 everybody's participation, and hopefully we'll all
21 leave more enlightened as we go forward to -- to
22 meet California's energy challenge.

23 Thank you.

24 PRESIDING MEMBER LAURIE: Thank you,
25 Commissioner.

1 At this time I'd like to call on Chris
2 Tooker, who will briefly review the agenda,
3 introduce our esteemed panelists, and gentlemen,
4 good morning. Thank you very much for taking your
5 time to share your thoughts with us today.

6 Let me -- we will provide an opportunity
7 for public questions or comment at the end of each
8 panel. If, because of time constraints or
9 otherwise you have a need to express yourself
10 earlier, then our Public Adviser, Roberta
11 Mendonca, is hanging out here somewhere, right in
12 the center of the room. Please let her know, and
13 we will attempt to accommodate your needs.

14 At this time I call on Mr. Tooker. You
15 have all received, or there is available a Staff
16 paper on the issue, which is our starting point
17 for discussion.

18 Chris, I assume you're going to call
19 upon Matt or someone else to summarize that paper.
20 Is that correct?

21 MR. TOOKER: That's correct,
22 Commissioner

23 PRESIDING MEMBER LAURIE: Why don't you
24 go ahead and pull that microphone really close to
25 you, because it's not picking up very well.

1 I'd ask all of our panelists, our
2 amplifying system is poor, so you have to get very
3 close to those microphones and speak up, otherwise
4 our audience will not hear you.

5 Do you know if this being broadcast on
6 the Web?

7 MR. TOOKER: I believe it is.

8 PRESIDING MEMBER LAURIE: Okay. That's
9 another reason why we must attempt to be as
10 articulate as possible.

11 Mr. Tooker.

12 MR. TOOKER: Thank you, Commissioner
13 Laurie.

14 As you can see from our agenda, we have
15 two panels today, one in the morning on Emission
16 Offset Regulatory Requirements, and then in the
17 afternoon a panel on Innovative Offset Sources and
18 Solutions --

19 PRESIDING MEMBER LAURIE: Okay. Let me
20 stop you right there. Can anybody -- can
21 everybody hear? How about the back row, can you
22 hear Mr. Tooker?

23 No. You folks really have to amplify.

24 And --

25 MR. TOOKER: Okay. Can you hear me now?

1 PRESIDING MEMBER LAURIE: Yes, much
2 better.

3 MR. TOOKER: Okay. This morning we have
4 a number of panel members who are going to be
5 making presentations. As well, we have in the
6 audience other individuals who may want to speak
7 to some of these issues, or to ask questions, and
8 we expect, as you say, that they will have an
9 opportunity to speak.

10 I would like first to go around the
11 table and have people introduce themselves, and
12 then we will begin with a Staff presentation or
13 summary of the Staff background paper, and then
14 proceed with the individual panel members.

15 PRESIDING MEMBER LAURIE: Excellent.
16 Thank you.

17 MR. TOOKER: So, to my left.

18 MR. NAZEMI: Good morning. I'm Mohsen
19 Nazemi, Assistant Deputy Executive Officer for
20 South Coast Air Quality Management District.

21 PRESIDING MEMBER LAURIE: Welcome, sir.

22 MR. WALTERS: Good morning. I'm William
23 Walters. I'm with Aspen Environmental Group, a
24 consultant with the CEC. I was the main author of
25 the -- of the paper.

1 PRESIDING MEMBER LAURIE: Welcome, Mr.
2 Walters.

3 MR. MOORE: Steven Moore, Senior
4 Engineer with the San Diego Air Pollution Control
5 District.

6 PRESIDING MEMBER LAURIE: Thank you.

7 MR. NGUYEN: Hi. Duong Nguyen, I'm with
8 the EPA Air Permits Office in San Francisco.

9 PRESIDING MEMBER LAURIE: Thank you, Mr.
10 Nguyen.

11 MR. POSPISIL: Good morning. Neal
12 Pospisil, Director of Environmental Health and
13 Safety with Calpine Corporation.

14 PRESIDING MEMBER LAURIE: Thank you.

15 MS. RUDERMAN-FEUER: Good morning. I'm
16 Gail Ruderman-Feuer. I'm a Senior Attorney with
17 the Natural Resources Defense Council.

18 PRESIDING MEMBER LAURIE: Thank you,
19 ma'am. Welcome.

20 Thank you.

21 MR. TOOKER: Thank you. Before we
22 proceed --

23 PRESIDING MEMBER LAURIE: Did I earlier
24 refer to gentlemen? If I did, I deeply apologize.
25 My apologies.

1 Mr. Tooker.

2 MR. TOOKER: Before we proceed with the
3 presentation of the Staff's -- summary of the
4 Staff's paper, I just want to ask each of the
5 presenters to make sure that they provide a -- if
6 they have a presentation in writing, that they
7 provide a copy to Mr. Matt Layton, so we can have
8 -- make sure that we have a copy to be docketed
9 for the record.

10 And with that, I would ask Mr. Walters
11 to provide a brief summary of the Staff background
12 paper on Emission Offset Availability Issues.

13 Mr. Walters.

14 MR. WALTERS: Again, good morning.

15 This paper was written in the context of
16 licensing power plants, and for the most part
17 dealing with those that are jurisdictional. Just
18 to begin, as background.

19 The offsets requirements are regulated
20 both by the federal government and state
21 government, specifically, in terms of attainment,
22 or to get attainment of ambient air quality
23 regulations. One of the methods in which they do
24 that for large major sources is requiring the
25 sources and their emissions be offset with an

1 equivalent or greater reduction of pollutants from
2 generally the same area.

3 PRESIDING MEMBER LAURIE: Does state law
4 preempt -- excuse me, does federal law preempt?

5 MR. WALTERS: Not necessarily, no.
6 State law tends to be a little more stringent than
7 the federal law in -- well, pretty much in all
8 cases, for offsets.

9 PRESIDING MEMBER LAURIE: So as to air
10 standards, states do have the independent
11 authority to develop standards in excess of
12 federal standards.

13 MR. WALTERS: They have the authority,
14 and the local districts also are -- are -- have
15 been delegated the PSD authority.

16 And the -- the requirements from
17 district to district do vary, based on the
18 attainment status of each district, so that some
19 districts have much more severe requirements for
20 offsetting, and some districts that are in
21 attainment essentially have no requirements for
22 offsetting, assuming that the modeled impact of
23 the source does not create new non-attainment
24 events.

25 The general way in which the emission

1 reduction credits or offsets are attained are
2 through emission reduction credits. The emission
3 reduction credits are generally done through
4 banking requirements, which is another regulatory
5 framework which is both put into the federal,
6 state and local regulations. Emissions
7 reductions, which are enforceable, quantifiable,
8 surplus, are -- can be banked at the local
9 districts and then they can be used to offset new
10 major sources of air pollution.

11 In terms of strategies of offsetting,
12 there -- there have been many that have been used,
13 depending on the situation, on the availability of
14 banked credits and desirability of specific
15 attainment solutions. Some of these --

16 COMMISSIONER PERNELL: Excuse me. On
17 the -- on the issue of banking the credits, is
18 that per air district, or can South Coast bank
19 credits and be used in San Diego, for example?

20 MR. WALTERS: I'll be getting to that
21 shortly, in terms of the use of inter -- inter-
22 district credits.

23 COMMISSIONER PERNELL: Okay.

24 MR. WALTER: Credits are banked
25 initially in the district in which they are

1 created. The strategies to using ERCs include
2 just using specifically the pollutants that are
3 required. If -- if a new plant is going to have
4 150 tons of NOx, it will have to offset that and
5 any additional offset ratio based on where the
6 emission credits may be from, whether they're
7 internal or not. So the amount of the credits
8 will be specified based on the specific situation
9 of the emission reduction credits that will be
10 used to offset the source.

11 Other strategies include the use of
12 inter-district offsets, specifically in the
13 situation of -- of downwind, where you have an
14 area that is in a -- a lower status of non-
15 attainment. A good example is Mojave Desert can
16 use emission reduction credits from South Coast,
17 as Mojave's problem is -- is primarily transported
18 pollutants from -- from the South Coast to the San
19 Joaquin Valley. In fact, they also can use San
20 Joaquin Valley credits; at least in their rules
21 they allow that.

22 Another strategy is to inter-pollutant
23 offset or emission reduction credits to offset.
24 That is done specifically or primarily for
25 precursor pollutants, which would be ozone and

1 PM10. So you can, in most cases, use VOC emission
2 reduction credits to offset NOx, and you can often
3 use SO2, VOC and NOx emission credits to offset
4 PM10 emissions.

5 Each district is a little different on
6 how they enforce and the emission offset ratios
7 that they apply to each of these situations.

8 Another strategy is using inter-sector
9 emission reduction credits. That is essentially
10 using emission reduction credits that you get from
11 a non-stationary source and apply it to a
12 stationary source. Examples would be emission
13 reduction credits from mobile emission sources,
14 emission reduction credits from road paving,
15 agricultural or other area sources.

16 PRESIDING MEMBER LAURIE: Can you
17 explain the relationship between CARB and the
18 local districts? What's the legal relationship
19 between the two different types of entities?

20 MR. WALTERS: Well, generally, for --
21 for permitting requirements, the local districts
22 have all of the authority. They have been
23 delegated by EPA. And -- and I'll probably defer
24 to -- to our panelist from CARB to give you that
25 --

1 PRESIDING MEMBER LAURIE: So I -- okay.
2 Well, I -- I'm going to ask our panelists, to the
3 extent that you represent those agencies, to
4 clarify that, whether you are representatives of a
5 federal agency, whether you're representatives of
6 the state agency, whether you're independent
7 entities. It -- it'd be helpful.

8 MR. WALTERS: Now, in terms of using
9 emission reduction credits, generally there --
10 there are two ways you can do it. You can use
11 internal credits that you already have at the
12 site, or you can gain from the site. This
13 particularly will work for repowering of existing
14 dirtier power plants, or perhaps putting in a
15 power plant at another large major source where
16 they could reduce emissions, whether that would be
17 a refinery or a -- a large smelter, or something
18 like that.

19 The other -- and the main method for
20 direction of -- of offsets is the use of banked
21 ERCs. That is generally a free market trading
22 that is done by and/or for the districts. And --
23 and that essentially requires the payment to other
24 parties for the emission reduction credits that
25 have been banked.

1 Emission reduction credit availability
2 is -- is very different in different regions in
3 the state. As you can see in the -- in the table
4 in the paper, there's very few emission reduction
5 credits currently available in San Diego, while
6 there's quite a bit of emission reduction credits
7 available in the San Joaquin Valley. In other
8 areas of the state there may essentially be no
9 emission reduction credits available. Many of
10 those areas, of course, are more rural and
11 therefore never had large stationary sources to
12 obtain emission reduction credits from.

13 PRESIDING MEMBER LAURIE: So if -- if no
14 ERC are available at any price, or any reasonable
15 price, what alternatives do we have -- and Chris,
16 if you want me to delay this question because it's
17 the subject of our second panel, I will. What
18 alternatives does one have to mitigate the air
19 impacts of their project. Are alternatives
20 available, or does no ERC equate to no project of
21 any sort?

22 MR. TOOKER: Well, one thing I might say
23 is that there are alternatives in terms of inter-
24 basin trading and so forth to obtain offsets from
25 other districts, if they are not available in

1 areas such as Mojave. To the extent that that's a
2 relevant issue and part of the rules allow it, for
3 instance, for South Coast, Mr. Nazemi will
4 probably speak to that. But I think in general,
5 to the extent that there are no offsets in a bank,
6 they need to be created and/or gotten from -- from
7 another district within the air basin.

8 PRESIDING MEMBER LAURIE: Okay. And I
9 -- I believe that is to be the primary subject of
10 Panel 2. My concern, of course, is that we're
11 locked into a single source solution, and that's
12 going to be certainly of interest to us.

13 MR. TOOKER: And I think the purpose of
14 this morning's panel is to describe the regulatory
15 structure which in those opportunities might be
16 available.

17 PRESIDING MEMBER LAURIE: Well, maybe we
18 can get to that if I stop asking questions.

19 (Laughter.)

20 MR. WALTERS: The cost of offsets had
21 been increasing throughout the years, probably
22 more dramatically in the last couple of years, at
23 least in terms of some of the licensing cases that
24 we've seen. A lot of that has to do with the lack
25 of availability, as you might expect, from a --

1 from a market demand perspective. In looking at
2 the -- at the general costs, a -- a typical power
3 plant, 27F frame, with typical BACT controls, the
4 -- the offset requirements could -- could run as
5 much as \$6 million, or more, depending on the --
6 on the basin and availability and cost of offsets
7 in that specific basin.

8 Now, the cost to create offsets can also
9 be similarly as high, depending on -- on the
10 availability of uncontrolled sources and how
11 easily they can be controlled.

12 The --

13 PRESIDING MEMBER LAURIE: Do we -- do
14 you have -- do any of the panelists have data
15 showing, or are you going to be talking about
16 where offsets are available and where they are
17 not? So does anybody own a map that says offsets
18 available here, they're not available there?
19 Anybody going to be talking about that at all?

20 MR. TOOKER: I think some of the
21 speakers will be -- will be talking about the
22 question of availability. I'm not sure that they
23 have a map showing --

24 PRESIDING MEMBER LAURIE; Yeah. Well, I
25 -- I use that figuratively, so. Because the

1 question, of course, is that if you're going to
2 build a power plant, no offsets available or too
3 tricky to get them, you're going to build a power
4 plant where credits are available and it's not the
5 right place to build a power plant. Same issue
6 with -- with water, natural gas, or -- or anything
7 else.

8 MR. TOOKER: Correct.

9 MR. WALTERS: Now, there are a lot of
10 different sources for offsets. And in terms of
11 the issues, the question on -- on those to some
12 extent is the -- the enforceability
13 quantification, et cetera. Some of the sources
14 where you can -- where you can obtain ERCs to
15 offset a power plant would be at an existing major
16 source. As I indicated earlier, a repowering
17 project, for example, or perhaps controlling
18 another major source and putting a power plant
19 nearby to use a low ERC offset ratio.

20 Other potential sources include mobile
21 emission reduction credits, MERCs, which have been
22 used on -- in selected cases. Reduction of
23 sources from agriculture can be used, specifically
24 --

25 PRESIDING MEMBER LAURIE: Does that mean

1 taking agriculture out of production?

2 MR. WALTERS: No, not necessarily. That
3 -- that can be replacing water pumps that are very
4 dirty, diesels, dust reduction methods in the
5 field, et cetera. As long as those -- those
6 methods can be quantified and enforced, et cetera,
7 to meet the ERC requirements.

8 COMMISSIONER PERNELL: And who does
9 that, the air district? I mean, who -- if I want
10 to create offsets by -- by taking out of
11 production a couple of pumps and a couple of big
12 dirty diesels, who do I go to to say I'm taking
13 this off, I want to bank some credits?

14 MR. WALTERS: Well, in terms of the
15 banking, you provide the information to the
16 district. And also, in terms of getting
17 information on where you may be able to find
18 higher polluting sources, you can get that from
19 the district. In terms of who will have to
20 actually create the offsets, right now that would
21 be to the third party, and would not necessarily
22 be done by the district, with the exception of the
23 Carl Moyer fund, and a few other things that are
24 being done for mobile emission sources that --
25 that are currently funded.

1 COMMISSIONER PERNELL: So that would be
2 through a third party.

3 MR. WALTERS: Well, that would be, say,
4 a power plant proponent.

5 COMMISSIONER PERNELL: Oh, right.
6 Right. Okay. I was putting myself in that
7 position.

8 MR. WALTERS: Some other -- okay. Some
9 other potential sources would be military base
10 closures. In some areas there have been a rather
11 significant amount of base closures that may be
12 able to be used.

13 Fugitive dust. Emission credits for
14 PM10. PM10 is one of the more problematic
15 pollutants, in terms of getting ERCs in many
16 districts.

17 The potential for energy efficiency, for
18 area sources. You may be able to get some
19 emission reduction credits that way, again, if
20 they're enforceable and quantifiable.

21 Some other issues that may impact offset
22 structure will be the new pollutant standards that
23 have been proposed by EPA, but not yet
24 implemented, namely the eight-hour ozone standard
25 and the PM2.5 standard. The attainment of

1 specific districts may change if the PM10 standard
2 is dropped and the PM2.5 standard is started.
3 Certain areas may be in attainment for a 2.5,
4 where they're in a non-attainment for PM10, and
5 it'll basically change the structure and need of
6 offsets for projects.

7 Other issues are the free market trading
8 and potential for credit hoarding. In the -- in
9 the current free market there is -- there is the
10 potential for misuse of emission reduction credits
11 to basically limit availability by speculative
12 accumulation, and other means.

13 PRESIDING MEMBER LAURIE: Why would that
14 be misuse?

15 MR. WALTERS: Basically, that would be
16 not allowing a specific company that say hasn't
17 gotten into the market early, wants to site a
18 power plant, not to be able to get emission
19 reduction credits because essentially they have
20 been -- they have been bought up by someone else
21 basically speculatively --

22 PRESIDING MEMBER LAURIE: Is that --

23 MR. WALTERS: -- trying to trade.

24 PRESIDING MEMBER LAURIE: -- is that
25 unlawful?

1 MR. WALTERS: No, it's not. But it is

2 --

3 PRESIDING MEMBER LAURIE: So --

4 MR. WALTERS: -- but it is an issue,
5 much like the Hunts trying to take over the silver
6 market. Of course, that was unlawful.

7 PRESIDING MEMBER LAURIE: So would it be
8 more fair to say that it's a detrimental use as
9 opposed to a misuse? And if something is -- is an
10 allowable action, but arguably is not good for the
11 system --

12 MR. WALTERS: I would agree. I would
13 agree with that. Detrimental is -- is a better --
14 better terminology.

15 Currently in the South Coast they are
16 considering changing their system. Right now,
17 power generation sources are in the RECLAIM
18 market, and they are considering taking those
19 sources out of the RECLAIM market, and I believe
20 we have a representative of South Coast who will
21 go into that in a little more -- little more
22 depth.

23 The other issue that comes along with
24 creation of ERCs is whether or not you can
25 quantify them, whether they're enforceable, and I

1 believe we have a representative from EPA to cover
2 that particular issue.

3 Changes in attainment status for various
4 districts will change the offset requirements, so
5 if a district can come into attainment the
6 requirements lessen, or if the severity of the
7 non-attainment changes in either direction the
8 amount, or the trigger level for the offsets can
9 change.

10 Also, not getting an attainment by
11 specific dates will increase the offset ratios
12 required for projects, and lower the trigger
13 levels.

14 And another issue is -- is the potential
15 for better control technology at new licensing
16 power plants, and project sizing to fit the offset
17 structure of particular districts.

18 One quick example might be if you have a
19 district where the offset thresholds are at 100
20 tons. You size the project so that it essentially
21 can be under 100 tons, and if a 27F frame is 150,
22 then you would size it with 17F.

23 And that -- that is basically most of
24 the information provided in the paper.

25 PRESIDING MEMBER LAURIE: Thank you,

1 sir, very much.

2 Chris.

3 MR. TOOKER: Thank you very much.

4 Our next speaker is Duong Nguyen, from
5 EPA, who will be talking about the role of
6 emission offsets in Clean Air Act implementation.
7 Duong.

8 PRESIDING MEMBER LAURIE: Mr. Nguyen,
9 good morning.

10 MR. NGUYEN: Hi.

11 PRESIDING MEMBER LAURIE: Get really
12 close to the microphone, please.

13 MR. NGUYEN: Okay. I was asked here by
14 Chris Tooker to talk briefly about the offset
15 requirements from the federal point of view, and
16 how -- and the role that these offsets play in the
17 implementation of the Clean Air Act. I'm here to
18 take notes. I'm not here to -- I'm not prepared
19 to present any EPA views on the current power
20 plant situation and the energy crunch.

21 But I'll talk briefly about the offset
22 requirements from the federal standpoint.

23 As you all know, the Clean Air Act
24 requires that new or modified major sources in
25 non-attainment areas obtain offsets or emission

1 reduction credits from the same source, or from
2 other sources located in the same -- same area.
3 Offsets can be obtained in another non-attainment
4 area if, one, the other area has an equal or
5 higher non-attainment classification status than
6 the area in which the proposed source is located;
7 and, two, if emissions from the other area
8 contributed to a violation -- by the source that
9 is -- by the proposed source, in the area in which
10 the proposed source is located.

11 The offset threshold and ratio depend on
12 the non-attainment area's classification. The
13 more severe the non-attainment status, the higher
14 the offset ratio and the lower the offset
15 threshold.

16 In order to implement these offset
17 requirements, EPA has come up with offset
18 policies, and first of all, offsets must be real,
19 quantifiable, enforceable, surplus, and permanent.
20 I'm sure a lot of -- of the people in the room are
21 aware of these criteria. And offsets must be
22 fairly enforceable prior to the issuance of a
23 construction permit. The offsets also must have
24 been achieved by the time the source commences
25 operation.

1 In another area we also allow pre-1990
2 offsets. However, these offsets can be used only
3 if they were included in the inventory of -- of
4 the -- for the reasonable progress -- I mean, of
5 the reasonable further progress, and the rate of
6 progress planned. And if they were included in
7 demonstration attainment plans, and if they were
8 otherwise creditable.

9 The offsets must also be RACT adjusted
10 at time of use, and --

11 MR. TOOKER: Could you explain RACT
12 adjustment please, Duong?

13 MR. NGUYEN: Well, RACT adjustment
14 simply means that at the time the applicant or the
15 source is ready to put the offsets into use, these
16 offsets must be adjusted according to whatever,
17 you know, RACT, reasonable available control
18 technology, is available, or is current at the
19 moment.

20 MR. TOOKER: Okay.

21 MR. NGUYEN: At this time we are also
22 keenly aware of -- of the need for offsets, and as
23 a result we have allowed several offset
24 alternatives. One is that we have allowed inter-
25 district, inter-basin offsets. This type of

1 offsets is allowed by the Clean Air Act, by the
2 California Health and Safety Code, and by some
3 district SIPs.

4 Of course, there's also inter-pollutant
5 and inter-basin -- I mean, inter-precursor
6 offsets. Our economic incentive program does make
7 allowances for these types of trades between NOx
8 and VOC. Some SIPs also allow for inter-pollutant
9 trading. Region 9 has allowed inter-pollutant
10 trading for VOC, between VOC and NOx, and SOx and
11 PM10. Other regions have not allowed these
12 trades. In general, we do not encourage this type
13 of trades due to uncertainties in modeling
14 analysis, the difficulties in establishing an
15 acceptable trading ratio, and the effects of such
16 trades on -- on the SIPs attainment demonstration.

17 We are keenly aware of the need for
18 offset alternatives, and we're having discussions
19 at the regional and headquarters level on how to
20 deal with -- how to deal with this issue. We're
21 considering the legal, the technical, and the
22 policy implications that this issue may have, and
23 if we have, you know, any guidance or uniform
24 policy that we can come up with in the future,
25 we'll certainly communicate it to industry and to

1 regulatory agencies.

2 The other type of offset alternative is
3 mobile emission reduction credits, MERCs. We
4 recently allowed this type of trade for a power
5 plant project in San Diego, but the approval was
6 based on a case by case basis, and we imposed
7 pretty strict and narrow restrictions to make sure
8 that the -- the offsets would conform with the
9 Clean Air Act.

10 Let me touch on -- on how offsets can
11 play into the attainment picture. As you know,
12 non-attainment districts have to submit SIPs to
13 bring areas into attainment by -- by timetable
14 deadlines that are stipulated in the Clean Air
15 Act. And reasonable further progress
16 demonstrations for ozone non-attainment areas must
17 include provisions to reduce emissions by mandated
18 percentages that are specified in the -- in the
19 Clean Air Act.

20 Offset ratios for VOCs required to
21 achieve the reductions are set according to the
22 non-attainment classification status. The higher
23 the classification, the higher the ratio.

24 Then let me talk about the consequences
25 of failure to attain by the timetable deadline.

1 When that happens, the air's non-attainment
2 classification is bumped up. The district must
3 submit a revised SIP after the classification has
4 been bumped up. Major source threshold is
5 lowered, and as a result a lot of sources would
6 fall into Title 5 and NSR universe that they would
7 not have otherwise.

8 Then additional RACT rules will become
9 applicable and will be imposed. Furthermore, a
10 penalty fee is imposed on sources in severe or
11 extreme non-attainment areas. The offset ratio is
12 increased. And lastly, if the district fails to
13 correct the SIP -- or SIP efficiencies, or submit
14 revisions to a SIP within 18 months, then
15 sanctions will apply. One of those sanctions is a
16 prohibition on highway projects and grants. The
17 other sanction is that the offset ratio will jump
18 to two to one for new or modified sources that are
19 subject to NSR.

20 PRESIDING MEMBER LAURIE: Okay. Thank
21 you, sir.

22 COMMISSIONER PERNELL: A couple of
23 questions.

24 PRESIDING MEMBER LAURIE: Commissioner
25 Pernell.

1 COMMISSIONER PERNELL: The -- the
2 federal rules are pretty transparent, and are they
3 in line with what the state does, in terms of
4 mobile offsets and -- and transferring offsets
5 between districts or basins?

6 I guess this question is for someone
7 from the state.

8 MR. NGUYEN: As far as mobile -- mobile
9 offsets are concerned, if a district SIP has such
10 provisions, we will certainly consider --

11 COMMISSIONER PERNELL: But -- but the
12 district has to have those provisions in their
13 regulations?

14 MR. NGUYEN: As far as I know. I don't
15 think we have any provisions for such offsets in
16 the Clean Air Act.

17 COMMISSIONER PERNELL; And then do you
18 guys -- you, the federal government allows
19 transfers of offsets between districts and air
20 basins?

21 MR. NGUYEN: Yes, inter-basin offsets
22 are allowed. Inter-district, inter-basin offsets.

23 COMMISSIONER PERNELL: Do those
24 districts or basins have to be connected, or can
25 we do a basin in the southern part of the state to

1 transfer credits to a basin in the northern part
2 of the state?

3 MR. NGUYEN: When we allow inter-basin
4 offsets we want to make sure that the -- the
5 offsets in which -- I mean, the basin in which the
6 offsets are generated upwind of the -- the basin
7 or the area in which the source is located, to
8 make sure that there is a net air quality benefit.

9 COMMISSIONER PERNELL: Okay. Thank you.

10 PRESIDING MEMBER LAURIE: Thank you,
11 sir.

12 MR. TOOKER: Thank you, Duong.

13 Our next speaker is Mohsen Nazemi, from
14 the South Coast Air Quality Management District.

15 Mohsen.

16 PRESIDING MEMBER LAURIE: Thank you.

17 Welcome, Mr. Nazemi.

18 I -- I don't hear well. Old war injury,
19 or too many beers during certain years. So the
20 audience may be able to hear, but I'm having a
21 difficult time doing so. So I think you need to
22 be within an inch or two of that microphone.

23 Thank you, sir.

24 MR. NAZEMI: Good morning. I'm Mohsen
25 Nazemi, with South Coast Air Quality Management

1 District, and I'm responsible for permitting and
2 compliance of stationary sources within the South
3 Coast region.

4 PRESIDING MEMBER LAURIE: And that
5 includes what geographical area?

6 MR. NAZEMI: I'm sorry.

7 PRESIDING MEMBER LAURIE: That includes
8 what geographical area?

9 MR. NAZEMI: Thank you. I was going to
10 say that. The --

11 PRESIDING MEMBER LAURIE: Sorry.

12 MR. NAZEMI: -- South Coast Air Quality
13 Management District covers four counties, Los
14 Angeles, Orange, Riverside, and San Bernardino.
15 The area is 6,700 square mile, and about 50
16 million population, 29,000 facilities, and about
17 60,000 permits for those facilities.

18 I have a power point presentation. If
19 we could turn it on I would appreciate it.

20 You had asked, Commissioner, earlier, a
21 question about CARB authority relative to the
22 permitting of power plants, and maybe quickly,
23 while the presentation is being loaded, I can
24 answer that.

25 The local districts in California, all

1 35 of them, have primary responsibility for
2 permitting of facilities, with the exception of
3 the power plants that are 50 megawatts or greater,
4 which the -- the sole authority lies with the
5 California Energy Commission.

6 The Air Resources Board has
7 responsibility mainly for mobile sources, but they
8 are an oversight agency. The EPA is also the
9 oversight agency associated with permitting of
10 power plants, and what normally happens is if a
11 power plant goes through local district
12 permitting, then before a final permit is granted
13 a draft proposal goes to both ARB and EPA for
14 their comments.

15 The comments are received and considered
16 and addressed before a final permit is issued.
17 However, EPA, under the Title 5 program, has the
18 veto authority on the permits, and --

19 PRESIDING MEMBER LAURIE: What about
20 CARB?

21 MR. NAZEMI: Air Resources Board, to the
22 best of my knowledge -- I am not an attorney, so
23 the attorneys probably should debate this -- does
24 not have a veto authority over a permit. But they
25 do have an oversight, overall general

1 responsibility.

2 MR. TOOKER: Commissioner Laurie, if I
3 might --

4 MR. NGUYEN: That's right. EPA has the
5 final objection power over Title 5 permits.

6 PRESIDING MEMBER LAURIE: Okay.

7 MR. TOOKER: If I might speak
8 specifically to your question about ARB's role.
9 Based on past experience, I know that although ARB
10 does not have the possibility of overruling a
11 district on an individual project basis, they do
12 have the ability to take over their programs, and
13 if they are to take any action at all it would be
14 at the program level of taking over their permit
15 programs, but not on an individual case by case
16 basis.

17 PRESIDING MEMBER LAURIE: Okay.

18 MR. NAZEMI: What I would like to do
19 this morning is to give you a very brief overview
20 of the offset requirements, and applicability to
21 siting of power plants. And I would like to
22 initially just caveat this with the recent
23 executive orders that were issued by Governor
24 Davis, and I'm not going to try to get into that
25 during my presentation, but I just want to point

1 that out, that that may change temporarily the --
2 the overall presentation of offsets requirements.

3 Let me see if I can move the slides.
4 The offset requirements apply --

5 MR. TOOKER: It's kind of hard. You
6 have to -- behind you.

7 COMMISSIONER PERNELL: It's not on that
8 TV right there?

9 MR. TOOKER: There we go.

10 MR. NAZEMI: The TV's off. It would
11 help if it was on.

12 The emission offset requirements --

13 PRESIDING MEMBER LAURIE: How do we --

14 COMMISSIONER PERNELL: One -- one
15 second. Maybe we can get it --

16 PRESIDING MEMBER LAURIE: There's
17 something called a power button.

18 (Laughter.)

19 MR. NAZEMI: I think we were trying to
20 conserve energy, Commissioner, here on --

21 I'll go ahead and start. The general
22 emission offset requirements applies to new,
23 modified or relocated facilities. And they rely
24 on several principles. The Federal Clean Air Act
25 requires offsets, the California State Clean Air

1 Act also requires offsets, and then local
2 districts, such as South Coast, has its own rule
3 which in most cases they're referred to as new
4 source review regulations, that also addresses the
5 offsets requirements.

6 PRESIDING MEMBER LAURIE: Are your
7 slides available somewhere?

8 MR. NAZEMI: They are loaded in your --
9 I don't have a -- okay, here we go.

10 PRESIDING MEMBER LAURIE: Okay.

11 MR. LAYTON: Commissioner Laurie, we do
12 have hard copies available, and if they ran out we
13 can make some more.

14 PRESIDING MEMBER LAURIE: Yeah. Can you
15 see if somebody can do that, Matt?

16 MR. LAYTON: Yes.

17 PRESIDING MEMBER LAURIE: Thank you.
18 Okay.

19 MR. NAZEMI: Okay. So I'll briefly
20 touch upon these three different requirements.
21 But before doing that, I wanted to give a --

22 MR. TOOKER: Mohsen, would it be better
23 if you moved over to where Duong is so you can see
24 the screen, and --

25 MR. NAZEMI: All right.

1 Before I talk about the federal, state
2 and local requirements, I wanted to give you an
3 overall understanding of what South Coast Air
4 Basin's attainment status is like.

5 We have the only area in the nation that
6 is designated as extreme non-attainment with
7 ozone, although Houston has worse air quality than
8 we do, but on the books, we are the only area
9 designated as extreme non-attainment.

10 We're also non-attainment for carbon
11 monoxide and PM10, under both federal and state
12 standards. However, we are attainment for
13 nitrogen dioxide, sulfur oxides, and lead. But I
14 need to put a caveat here that both nitrogen oxide
15 and sulfur oxides are precursors to ozone and
16 PM10, and therefore, under our program, we would
17 still require the emissions to be offset even
18 though they are attainment, in that sense.

19 There are -- well, it did change a
20 minute ago. Okay.

21 Under the Federal Clean Air Act, the
22 offset requirements applies to major sources. And
23 in the South Coast Air Quality Management
24 District, we have three air basins that actually
25 is covered under our jurisdiction. The most

1 significant one that I'll just focus on is the
2 South Coast Air Basin, under which the designation
3 or definition of a major source is the ten tons
4 per year potential to emit thresholds for both
5 organics and nitrogen oxide, and that's the lowest
6 threshold anywhere in the country, in terms of
7 applicability of federal offsets requirement.

8 On the Salton Sea Air Basin and Mojave
9 Desert, because of the attainment definition or
10 designation being different, the definition of
11 major sources changes. So the offset requirements
12 from the federal standpoint changes for those.

13 Under the Federal Clean Air Act,
14 however, the non-attainment, extreme non-
15 attainment area offset requirements are a ratio of
16 1.5 to 1. In other words, for every pound of
17 emissions there needs to be a pound and a half of
18 offsets provided in order to provide the benefit
19 for sources that are being permitted, in terms of
20 net air quality benefit.

21 MR. TOOKER: Mohsen, if that's not
22 working reliably, maybe you could just ask Sandy
23 and she'll advance it to the next slide.

24 MR. NAZEMI: That would be great. Thank
25 you.

1 Under the state Clean Air Act
2 requirements, the definition of major source sort
3 of disappears. It applies to any source that adds
4 an emission increase that is required to
5 demonstrate what's known as a no net emission
6 increase in the basin.

7 And the ratio of no net emission
8 increase is generally speaking a one to one ratio.
9 As a result of the definition of any emission
10 increase, what we have under our South Coast
11 program, we have requirements for all sources,
12 regardless of their size, to have to demonstrate
13 compliance with the offsets requirement.

14 If I can have the next slide. Oops, now
15 you go back once.

16 Under the South Coast new source review
17 program, there are several elements, and I'm not
18 going to focus my discussion on those, but there
19 are BACT, or best available control technology,
20 and LAER, or lowest achievable emission rate
21 requirements. There's also modeling demonstration
22 requirements. But specifically to the topic of
23 this discussion, there's offsets requirements that
24 applies to all sources, with the exception of the
25 sources that are exempted specifically from

1 offsets requirements.

2 The ratio that is required under our
3 rules is a 1.2 to 1. And the facilities that are
4 in South Coast are divided into basically two
5 groups, one that are facilities, or 380 of those
6 that are in the RECLAIM Program, and then the
7 rest, 28,000 plus that are not in the RECLAIM
8 Program.

9 Under the RECLAIM Program, the emissions
10 offsets are known as RTCs, or RECLAIM Trading
11 Credits, whereas in the non-RECLAIM Program,
12 they're referred as to ERCs, or Emission Reduction
13 Credits.

14 As part of our new source review rules,
15 there are sources that have less than four tons
16 per year emission that are exempt from offsets
17 requirements. When I say that, that means that
18 the source itself is not responsible to provide
19 the offset, but our district provides the amount
20 of offsets or emission increases associated with
21 those sources on an annual basis, and we have to
22 make that demonstration to both Air Resources
23 Board and EPA.

24 There are also other sources such as
25 essential public services that have access to a

1 bank of credits that we refer to as priority
2 reserve, and therefore those sources do not have
3 to provide offsets. And there are also other
4 provisions in our rule that allows for projects
5 that are subject to regulatory compliance, and a
6 good example is the reformulated gasoline that is
7 mandated under federal and state. Those sources
8 would also not have to provide the offsets
9 directly, and the district will provide those
10 offsets on an annual equivalency basis.

11 MS. TOWNSEND-SMITH: Can I ask you a
12 quick question.

13 MR. NAZEMI: Sure.

14 MS. TOWNSEND-SMITH: On the priority
15 reserve, what did you say the businesses were, and
16 does that include construction, or -- or does it
17 also include like backup generators and things
18 like that?

19 MR. NAZEMI: The priority reserve mainly
20 applies to what we call essential public services,
21 and those are generally like sewage treatment
22 plants and landfills, and things of that sort.
23 The exemptions that I mentioned that are in the
24 rule, I only mentioned the four tons per year
25 exemptions, there are several other exemptions,

1 and the emergency backup generators are one of
2 those that are exempted from having to provide
3 offsets, provided they operate 200 hours or less
4 per year.

5 MS. TOWNSEND-SMITH: Thank you.

6 MR. NAZEMI: The ERCs that are utilized
7 are created in a number of different ways, and I'm
8 not going to spend too much time on that. Maybe
9 this would be a subject of the afternoon
10 discussion. But they're either created through
11 shutdown of equipment or controlling the equipment
12 over and beyond what is already required under the
13 rules.

14 There is also a possibility of looking
15 at non-stationary source ERCs, such as area source
16 and mobile sources. And the last thing I'll
17 mention quickly is that in the -- in terms of
18 issuance of emission reduction credit, at the time
19 of issuance our district, under our new source
20 review requirement, discounts the ERCs to BACT
21 levels, and that's a little different than what
22 the federal requirement is, which is RACT
23 adjustment, or reasonable achievable available
24 control. We go down to best available control.
25 And that's part of the overall agreement that we

1 had with EPA to allow us to use a 1.2 to 1 offset
2 ratio, instead of the 1.5 to 1 for major sources.

3 Quickly, on the inter-pollutant trading,
4 that's really an issue that deals with precursors.
5 And the concept is that if you can reduce
6 emissions for -- from a precursor to another
7 pollutant and there are only two secondary
8 pollutants, ozone and PM10, then you could get the
9 same benefit to the extent that they would reduce
10 or not form the secondary pollutant.

11 The inter-district trading, the question
12 was brought up earlier, if it's within the same
13 basin there are certain allowances that -- that
14 allows the transfer of credits within -- between
15 the districts. If they're in different air basins
16 -- I think Commissioner Pernell, you asked about
17 that -- it has to be in a way that the source of
18 ERC, that is, the generated ERCs have to be in an
19 upwind area to the -- to the location where the
20 emission credits are going to be used.

21 Also, where the emissions are generated,
22 the credits are generated, has to be in a worse
23 air quality attainment status compared to the
24 basin where the emissions credits are going to be
25 used. And the -- the air quality in that downwind

1 area has to be overwhelmingly impacted by the
2 upwind area.

3 If all those conditions are there, and
4 both governing boards of the two districts pass a
5 resolution to make that happen, then inter-
6 district transfers could occur. But other than
7 that, they're not legally allowed.

8 COMMISSIONER PERNELL: So both districts
9 or basins have to approve the application, or
10 request.

11 MR. NAZEMI: That's correct. Both the
12 -- the transferring and receiving districts have
13 to approve that.

14 May I have the next slide, please.

15 COMMISSIONER PERNELL: The next slide,
16 please.

17 MR. NAZEMI: This is a quick look at a
18 question that was asked by Commissioner Laurie
19 earlier, about the availability of offsets. This
20 doesn't show a map, but it shows in South Coast
21 how many pounds per day of ERCs are available, and
22 the amounts that are shown there in the first
23 column shows what's left.

24 The second column shows the amounts that
25 were recently purchased by a number of power

1 plants that are undergoing permitting in South
2 Coast Air District. And as you can see, of the
3 total, for example, of hydrocarbon emissions,
4 about 5,000 of the remaining 20,000 was purchased
5 by power plants, and there was another 3700 pounds
6 that was transferred to other districts for
7 permitting of new power plants. Specifically,
8 those were all transferred to Mojave Desert Air
9 Basin under the inter-district transfer for
10 permitting of the High Desert and Blythe projects.

11 I think of particular interest here is
12 the availability of PM10 emissions credits. As
13 you can see, the remaining bank of credits is
14 about 1100, and recently 960 pounds were purchased
15 for permitting of power plants. What that really
16 tells us is that there's not enough PM10 credits
17 to permit the power plants that are proposed in
18 South Coast, and certainly with the advent of the
19 shortage of credits, our board has now been more
20 sensitive to agreeing to transfer credits outside
21 the district for other districts to permit those.

22 If we can go to the --

23 COMMISSIONER PERNELL: Is there -- I'm
24 sorry. Is there an effort by your board to seek
25 credits that are outside your district? Rather

1 than -- I understand about not transferring them
2 out, but is there a -- a movement to transfer some
3 in?

4 MR. NAZEMI: Unfortunately, under state
5 law we cannot transfer any credits into the
6 district, because we are in a worse non-attainment
7 area than anywhere else, and therefore, we cannot
8 bring credits into the district. We are only the
9 exporter of credits.

10 COMMISSIONER PERNELL: I see.

11 MR. NAZEMI: May I have the next slide,
12 please. I think if you go back one -- I'm sorry.

13 This is a quick snapshot of what
14 happened to the price of emission reduction
15 credits, or ERCs, in the last five years. As you
16 can see, the price of reactive organic gases or
17 hydrocarbons has almost doubled from a year ago.
18 The same thing with nitrogen oxides. And the
19 reason that nitrogen oxide hasn't gone up
20 significantly is because the majority of users of
21 nitrogen oxide credits are in the RECLAIM market,
22 and they don't deal with ERCs, they deal with
23 RTCs.

24 Sulfur oxides and CO have not increased
25 significantly, and I think you can attribute that

1 to maybe inflation and other things, but you can
2 see that PM10 credits from a year ago, or two
3 years ago, they have quadrupled, and the problem
4 is now that they are not available and they're
5 very scarce. So the price is not an issue, it's
6 --- it's not available. The availability is the
7 big issue.

8 May I have the next slide, please.

9 PRESIDING MEMBER LAURIE: The RECLAIM
10 Program is important. It's my fault that we've
11 gotten so far behind, and I apologize for that.
12 But let's see if we can summarize, Mohsen, in
13 about five minutes or so, if you can.

14 MR. NAZEMI: Okay. In fact, I probably
15 don't need that much.

16 The RECLAIM Program presently requires
17 the new power plants to provide RTCs for their
18 first year of operation. So if a power plant is
19 coming online on the year 2003, in order to get a
20 permit they need to just demonstrate that they
21 have adequate RTCs for the first year of
22 operation, under our rules.

23 We are, however, are you are well aware,
24 undergoing some proposed changes to the RECLAIM
25 Program, and these changes will be brought to our

1 governing board for approval in the early part of
2 May of 2001, and some of the issues that we are
3 right now debating are whether or not the new
4 power plants should stay in the existing RECLAIM,
5 or be put in the bifurcated universe that is being
6 generated for the existing power plants, on a
7 temporary basis.

8 Also, the other question that we are
9 dealing with is should the new power plants supply
10 RTCs, or can they provide mitigation fees into a
11 air quality investment program where the district
12 will then go out and find offsets to supply the
13 needed credits for the power plants to be able to
14 provide the offsets.

15 And, finally, I will just quickly run
16 through the last three slides, if you'd like to
17 have a sense of why there is an issue with the
18 RECLAIM amended changes. This shows that the
19 emissions and allocation, actual emissions and
20 allocation in the RECLAIM Program cross over in
21 1999, but if you go to the next slide you can see
22 that for the utilities, that crossover actually
23 occurred in 1998, and since that time the
24 emissions in '99 were one and a half times of
25 overall power plant allocations, and in the year

1 2000 they were -- actual emissions were more than
2 twice of the amount of initial allocation. And we
3 will probably see a lot worse picture in 2001,
4 because even in the first quarter they're -- they
5 have already exceeded the initial allocations.

6 And as a result, the last slide will
7 show you what happened to the price of the credits
8 in the RECLAIM Program, and the average price of
9 credits in '99 for a year 2000 RTC was two and a
10 half times of what it was back in the '98-'97
11 timeframe. But the year 2000, those prices went
12 up by a factor of tenfold, and as a result we are
13 moving forward with the recommended changes to
14 make sure that not only there are available
15 offsets, but the RTC prices are stabilized for the
16 remaining RECLAIM facilities.

17 And then, finally, what we are doing is
18 working in tandem with the Energy Commission, CEC
19 and other CAPCOA members, as well as the EPA, to
20 make sure we implement both the AB 970 and
21 appropriate executive orders that were issued by
22 the governor.

23 Thank you.

24 PRESIDING MEMBER LAURIE: Thank you,
25 sir.

1 Before we get to our next speaker, let
2 me just note, Mr. Cohn, of SMUD, we will get to
3 you before noon, so hang on.

4 Mr. Layton.

5 MR. LAYTON: Commissioner Laurie, I'd
6 like to introduce Steve Moore, from the San Diego
7 Air District.

8 PRESIDING MEMBER LAURIE: Mr. Moore,
9 good morning.

10 MR. MOORE: Good morning.

11 PRESIDING MEMBER LAURIE: We also have
12 hard copies of Mr. Moore's presentation.

13 MR. LAYTON: We do. There are more
14 copies available. Would you like me to give you a
15 copy, as well?

16 PRESIDING MEMBER LAURIE: Yeah. We --
17 we have them. I guess that was not intended as a
18 question.

19 MR. MOORE: Thank you. I'm going to
20 give a brief overview of the offset situation in
21 San Diego County. The San Diego Air Pollution
22 Control District basically consists of San Diego
23 County.

24 At this time we do not require any state
25 offsets. I say at this time because the reason we

1 don't require state offsets is because, under AB
2 3319, we made the necessary demonstrations so that
3 we were relieved of that responsibility. However,
4 as part of that program we have to make an annual
5 demonstration that there'll be no net increase of
6 emissions in San Diego County, and because of the
7 new peaker units that are being sited there --
8 eight, at the last count -- we have some concerns
9 that we may not be able to make that demonstration
10 in the future, in which case we would be requiring
11 state offsets for NOx and VOC, because we are a
12 non-attainment area for the state standards for
13 ozone.

14 PRESIDING MEMBER LAURIE: And at what
15 point do you make a determination? Is it just the
16 next poor guy that's stuck in line, or do you
17 watch along the way and -- and anticipate and
18 forecast? So is it a question of unlucky timing
19 who gets caught?

20 MR. MOORE: Pretty much. We can't make
21 our demonstration to the Air Resources Board.
22 We'd be required to provide state offsets if we
23 start at 15 tons.

24 As far as the other criteria pollutants
25 go, we're in attainment of the CO and SO2

1 standards. We've not required any offsets for
2 them. We do not attain the PM10 standard, the
3 state standard. However, the Health and Safety
4 Code does not require PM10 offsets, and we do not
5 require any in San Diego County.

6 There is a provision in our rules that
7 they can be provided to offset or mitigate impacts
8 on local air quality, but it's not a requirement
9 in the rules. It's an option, basically.

10 However, we do require federal offsets.
11 We are a serious non-attainment area for the
12 national air quality standard for ozone. So we
13 require NOx and VOC offsets for sources that are
14 larger than 50 tons per year. There's additional
15 emission offsets require the ratio of 1.2 to 1.

16 This is just to give you an idea of the
17 amount of offsets that are required. This is the
18 proposed Otay Mesa Generating Project. It's two
19 natural gas turbines, combined cycle turbines,
20 with two ppm NOx at 15 percent oxygen, which is
21 pretty much state of the art for SCR control, at
22 least that. They're hoping to do better with
23 SCONox. Five hundred and ten megawatts, and as a
24 result, they're going to generate about 100 tons
25 per year of emissions. That's what they've taken

1 as a permit limit. As a result, they require 120
2 tons per year of offsets.

3 The current ERCs that are available in
4 the bank are 122 tons of NOx and 224 tons of VOCs.
5 That works out to be about 234 tons of NOx
6 equivalent. We allow a two to one conversion of
7 VOC credits into NOx credits. That also may
8 change in the future. EPA has objected to our new
9 source review rules on that basis. However, they
10 said at the time, for the present time, we can go
11 ahead and use that -- that conversion ratio.

12 Of those 234 tons, about 50 tons have
13 been optioned to PG&E as part of the Otay Mesa
14 Generating Project. In addition, I put available
15 there in quotes because, of those 180 tons, most
16 of them are not for sale. Sources in the county
17 want to hold on to those credits. They have
18 projects of their own in the future that they may
19 want to use them for, so it's very hard to buy
20 credits.

21 In addition, there's the EPA RACT
22 adjustment issue that was mentioned previously.
23 It's not clear right now how much those credits
24 will be worth when they are actually used. We
25 don't agree with that policy. We adjust the

1 credits when they're created, but as a practical
2 matter, for a major source that's going to go
3 through new federal new source review, they're
4 going to have to be RACT adjusted at time of use.

5 PRESIDING MEMBER LAURIE: If the
6 district has the authority to approve an offset
7 package, and my understanding is that that is your
8 jurisdiction, is -- is that correct?

9 MR. MOORE: Yes.

10 PRESIDING MEMBER LAURIE: So a developer
11 goes -- a buyer goes to a seller, as an example,
12 and arranges -- or a series of sellers, and
13 arranged for the transfer of a certain number of
14 credits, then they have to come to you to sign off
15 on that. Is -- is that correct?

16 MR. MOORE: We have to have approved the
17 credits. They have to be in our bank.

18 PRESIDING MEMBER LAURIE: Yeah. Okay.
19 But then do you have discretion whether or not --
20 assuming you have X number of units in the bank,
21 and the developer brings to you X minus Y
22 requests, and so you have sufficient quantities in
23 the bank. What discretion do you have to not
24 approve that -- those transfers?

25 MR. MOORE: I can't think of any

1 transfer that we have not approved, basically.
2 Credits are recorded individually. It's not a
3 bank like that we have an account of 180 tons of
4 credits. Each credit is an individual item. And
5 so the developer purchases those credits for --
6 from whoever owns them.

7 PRESIDING MEMBER LAURIE: Well, can a
8 local district -- strike that.

9 Can -- can the City of San Diego come to
10 you and say well, we understand that the amount of
11 credits total in your district is X. And let's
12 assume it's somewhat limited. And, you know,
13 we're really trying to get in the series of
14 business parks that's going to require their own
15 credits, and we're going to ask you limit the
16 transfer in one direction so that they're
17 available for a different kind of use, other than
18 a power plant, for example.

19 Is that something you'd consider? That
20 is, do you look at local land use requirements and
21 determine what regional land use needs are and try
22 to make decisions accordingly, or don't you get
23 into that?

24 MR. MOORE: We don't get into that, and
25 honestly I don't think we have the authority under

1 our rules to do that.

2 PRESIDING MEMBER LAURIE: Okay. Thank
3 you.

4 MR. MOORE: I think I'll arrange my
5 slide show a little differently next time.

6 I put this slide in basically just to
7 show why it's hard to create credits from existing
8 sources. The credits have to be surplus from the
9 existing rules and regulations, and an
10 uncontrolled turbine, 1970 vintage, was about 225
11 ppms of -- ppm of NOx in the exhaust. In 1973,
12 our Rule 68 dropped it to 42 ppm, and in 1997 our
13 BARCT rule, which is best available retrofit
14 control technology, which is a state requirement,
15 dropped it to somewhere between 9 and 15 ppm.

16 And so any emission reductions have to
17 be on top of this, and so already 90 to 95 percent
18 of the emission reductions that can be obtained
19 from a turbine, that is under our rules and
20 regulations, have been basically preempted by the
21 regulations.

22 There are some additional potential NOx
23 ERC sources. These are sources from -- stationary
24 sources that have been investigated in San Diego
25 County. Overcontrolled existing sources. The

1 existing power plants, they could be credit
2 sources, but unless the -- they're repowered
3 onsite, they would have to be shut down or their
4 operations restricted in order to generate
5 credits. We're exploring ways to try and -- ways
6 to get around that, but right now that would be
7 the situation.

8 Exempt equipment has been looked at.
9 For example, turbines less than one megawatt, pre
10 1994, are exempt from our rules and regulations.
11 And so are boilers less than five million Btus per
12 hour. PG&E went around and did a pretty thorough
13 job of trying to find additional NOx sources from
14 stationary -- NOx credits from stationary sources,
15 and actually did not come up with very much.
16 There is some potential for the turbines and
17 boilers. The boilers generally don't generate
18 much emission, so the potential is small.

19 There aren't very many turbines around,
20 and additionally there's the complication of
21 trying to quantify reductions. Because they're
22 exempt, oftentimes they don't have the records
23 necessary to try and quantify what their previous
24 emissions were.

25 In addition, we have a MERC program that

1 was developed in conjunction with the Otay
2 Generating Project, that is going forward and is
3 the source of credits which will probably be used
4 for that project. We had a previous MERC program
5 that was actually approved also, that was for
6 repowering fishing boats. However, that program
7 pretty much hasn't gone forward because of the
8 restrictions that eventually were incorporated in
9 the program made it economically not viable.

10 As far as some of the other -- well,
11 this is sort of the punch line, but as a result of
12 the scarcity of NOx offsets in San Diego County,
13 sort of similar to South Coast, the prices have
14 escalated rapidly. You can see from '94 to 2000
15 it went from \$14,000 to \$70,000 a ton. This is
16 for credits from stationary sources. The MERC
17 credits are significantly more expensive than
18 this.

19 PRESIDING MEMBER LAURIE: Thank you,
20 sir, very much.

21 Mr. Layton.

22 MR. LAYTON: Thank you. Can you hear
23 me?

24 PRESIDING MEMBER LAURIE: Yes.

25 MR. LAYTON: I would like to introduce

1 Mr. Neal Pospisil from Calpine.

2 MR. POSPISIL: Good morning.

3 PRESIDING MEMBER LAURIE: Good morning,
4 sir.

5 MR. POSPISIL: On short notice I'm here,
6 and therefore would like very much to have this
7 interactive discussion, and when you have
8 questions please interrupt while I'm speaking
9 about the experience that Calpine has.

10 As you're aware, we have three projects
11 currently under construction, two which are going
12 to come online this summer. The ones that are
13 coming online are the Los Medanos Energy Center
14 and the Sutter Power Project. And the other one
15 that's in construction is the Delta Energy Center.

16 All three of these --

17 PRESIDING MEMBER LAURIE: Can everybody
18 hear okay?

19 No.

20 MR. POSPISIL: Oh, I'm sorry.

21 PRESIDING MEMBER LAURIE: There you go.

22 MR. POSPISIL: Okay. As the panel is
23 aware, Calpine Corporation has three projects
24 currently under construction in California, the
25 Los Medanos Energy Center, the Sutter Power

1 Project, and the Delta Energy Center. All three
2 of these projects did require emission reduction
3 credits. Therefore, we have been evaluating the
4 marketplace throughout California in all the air
5 districts for several years, and have been very
6 proactive in putting a tremendous amount of effort
7 forth in the early stages of our project planning
8 in evaluating whether or not these are available
9 for the proposed projects, and have been procuring
10 these on a as project basis.

11 In regards to your siting process, when
12 we submit an application we have to put a
13 reasonable package forward at the very initial
14 stage of the siting process, and therefore advance
15 planning and certainty are key. The advance
16 planning is on our shoulders. However, the
17 certainty is within the hands of the agencies.
18 And when I say certainty, I'm basing that on the
19 potential the inter-pollutant trades that we
20 propose and also the CEC mitigation that is beyond
21 the agency requirements that we may have to put
22 forth later on in the process, and therefore puts
23 a bit of, you know, uncertainty into the package.

24 Thus far, working within the Bay Area,
25 we have been very successful with the inter-

1 pollutant trades that we have proposed. But in
2 other cases, you know, we have been three-quarters
3 of the way in the permitting process and have run
4 into a bit of uncertainty, where the CEC does have
5 the discretion for mitigation. And therefore,
6 we're required to mitigate with emission reduction
7 credits on sources that are, for instance, exempt
8 from the state agency, and therefore taking
9 emission reduction credits out of a pool that can
10 be used under general regulatory requirements
11 within the air district.

12 PRESIDING MEMBER LAURIE: Okay. Let me
13 --let me stop you right there. Mr. Tooker, can
14 you, or Mr. Layton, in one sentence, explain the
15 nature of CEC mitigation in excess, or in addition
16 to local district mitigation.

17 MR. TOOKER: Yes. When the Energy --
18 the Energy Commission, as lead agency in the
19 licensing process, is responsible for addressing
20 CEQA issues, and when Staff carries out its
21 independent analysis it identifies any potential
22 impacts that it believes are significant in air
23 quality and a number of other areas. And --
24 sorry.

25 When Staff carries out its independent

1 analysis to address CEQA issues and make
2 recommendations to the Commission on a licensing
3 case, we identify those areas in which we think
4 there may be significant impacts, including areas
5 of air quality, taking into consideration project
6 specific and locational aspects and potential
7 impacts on public health, notwithstanding
8 regulatory requirements.

9 And where we believe that there is
10 sufficient evidence to demonstrate the potential
11 for a significant impact, we would recommend a
12 mitigation be provided.

13 PRESIDING MEMBER LAURIE: In what
14 percentage of our cases do we require, or does
15 Staff propose mitigation in excess of local
16 district requirements? Some, all, most?

17 MR. TOOKER: I don't have an exact --
18 exact answer. I would probably say most.

19 PRESIDING MEMBER LAURIE: Okay.

20 MR. TOOKER: In those areas where there
21 are not mitigation requirements for specific
22 pollutants by -- by local districts, and there are
23 increases in those pollutants that contribute to
24 existing violations. Most normally it pertains to
25 particulate matter, because although particulate

1 matter emissions may result in -- or there may be
2 existing violations of state PM10 standards,
3 there's not a regulatory requirement under state
4 law for them to -- for an applicant to provide
5 offsets for those.

6 PRESIDING MEMBER LAURIE: Okay. That
7 helps. Thank you.

8 Mr. Pospisil.

9 MR. POSPISIL: Yeah. In general, you
10 know, what have we learned from our development
11 in, you know, the past several years. In general,
12 there's a PM10 state shortage. And what would be
13 helpful, I believe, for the developers would be
14 flexibility in creation of PM10 ERCs. Also,
15 certainty as up front as possible with proposed
16 inter-pollutant trades. And I believe it may be a
17 good idea, rather than a requirement for the
18 applicant to use ERCs that are within an air basin
19 under the -- an APCD, to potentially, as in the
20 case of I believe it was the Otay Mesa project, to
21 provide some ERCs, plus some mitigation fee.
22 Therefore, leaving more ERCs in the pool of the
23 air district so the development of power projects
24 can be more easily done.

25 PRESIDING MEMBER LAURIE: When you do

1 your initial site inspections and you look for
2 necessary ingredients, potential for gas supply,
3 potential for transmission connections, is it fair
4 to say that ERC availability is one of the factors
5 that you examine before you determine to invest in
6 a given site?

7 MR. POSPISIL: Yeah, absolutely. It's a
8 very critical component in the siting evaluation.

9 PRESIDING MEMBER LAURIE: Is it your
10 sense that most developers have maps on the wall,
11 or the equivalent, of where ERCs are available
12 statewide?

13 MR. POSPISIL: I'll make the statement
14 that prudent developers absolutely have to have
15 these maps on the walls.

16 PRESIDING MEMBER LAURIE: And that, of
17 course, includes your -- your employer.

18 MR. POSPISIL: Yes.

19 PRESIDING MEMBER LAURIE: In looking at
20 that map that you presumably have on your wall,
21 and you eliminate all charts but ERC availability
22 charts, and so you have one map on the wall and
23 you go -- and you look at the state of California,
24 and you determine that certain given areas have in
25 most likelihood the greatest availability of

1 offsets, sufficient for your project. In looking
2 at that map, is that equivalent to where the load
3 is -- is, and where new power plants are required,
4 or is there a lack of synchronization there?

5 MR. POSPISIL: Well, it's an interesting
6 question, because when -- if you were to take a
7 look, you know, at California on a statewide
8 basis, you know, where the load is is usually
9 where the air quality is potentially in a non-
10 attainment situation because you have more sources
11 of pollution, and therefore that's where the ERC
12 is required. So as a result, to permit a power
13 plant close to the load center, then you are more
14 than likely required to have to obtain ERCs rather
15 than building a power plant in an area where there
16 isn't much development that's attainment --

17 PRESIDING MEMBER LAURIE: And can you
18 explain what advantage, if any, there is to
19 building a plant where the load is?

20 MR. POSPISIL: In siting a power plant
21 closer to where the load is, if you have your gas
22 line and your transmission close, the electricity
23 does not have to flow as great a distance, and --
24 or transmission lines do not need to be upgraded,
25 et cetera.

1 PRESIDING MEMBER LAURIE: And does that
2 affect efficiency issues at all, to your
3 knowledge? Do you know?

4 MR. POSPISIL: You're actually talking
5 about a topic that is out of my area of expertise.

6 PRESIDING MEMBER LAURIE: Okay. Thank
7 you. Thank you, sir.

8 MR. POSPISIL: You're welcome.

9 PRESIDING MEMBER LAURIE: Anything
10 further at this time?

11 MR. POSPISIL: No, that's it, in
12 summary.

13 PRESIDING MEMBER LAURIE: Thank you very
14 much.

15 Commissioner Pernell, did you have any
16 questions?

17 COMMISSIONER PERNELL: Well, yes, I do
18 have a question. Perhaps more than one.

19 You mentioned for generators, as it
20 relates to PM10, that flexibility would be
21 preferred, in terms of offsets. And just a brief
22 example of -- of -- I think I heard that you said
23 we can perhaps get half of them and then pay a
24 mitigation fee. Is that an example of the
25 flexibility you're talking about?

1 MR. POSPISIL: Well, yeah. There's
2 actually two aspects. When PM10 is required as an
3 emission reduction credit on a -- from the
4 regulatory agency, you know, we have to plan ahead
5 of time and look at the potential possibility of
6 using creation as a methodology to get through the
7 permitting process, and to keep the air quality
8 reasonable in that area we also have to look at
9 inter-pollutant trades.

10 But as we're permitting our project
11 through the process, that's where we could
12 potentially have to provide mitigation to the
13 California Energy Commission. And if so, what I
14 did state was that, in the example of the Otay
15 Mesa Generating Project, that I believe that they
16 offset some of their PM10 and the -- but not all
17 the way up to the amount that they were emitting,
18 and therefore paid a mitigation fee for that
19 difference.

20 And so I see that as a reasonable
21 alternative with CEC mitigation.

22 COMMISSIONER PERNELL: And you guys have
23 never -- Calpine has never had the occasion or
24 opportunity to do that?

25 MR. POSPISIL: We have not, as a matter

1 of fact. In one of our projects right now that's
2 going through the licensing process, we have
3 worked with the California Energy Commission, and
4 we have had to provide almost traditional ERC
5 mitigation. In other words, we're using ERCs that
6 would've been exempt from a certain air pollution
7 control district, but now we're taking them out of
8 that pool and we're putting them forth in our
9 package to permit one of our projects.

10 COMMISSIONER PERNELL: Okay.

11 PRESIDING MEMBER LAURIE: At what point
12 in time in our process do you know that Staff is
13 recommending or requesting additional mitigation?

14 MR. POSPISIL: My experience with CEC
15 mitigation is only in one project, and I would say
16 about halfway through to the three-quarter mark,
17 through the process. Is that correct, Chris?

18 MR. TOOKER: The first point at which it
19 -- the first opportunity we have would be at our
20 issue identification statement. If it was not
21 identified at that point, and it should be, then
22 it would be identified in the Preliminary Staff
23 Assessment. I don't believe that there should be
24 any normal circumstances in which it would not be
25 identified until the Final Staff Assessment.

1 Those -- those kinds of issues should be
2 identified early on and put on the table to inform
3 the Committee and the Applicant, and others.

4 COMMISSIONER PERNELL: Are we talking
5 about a 12, 6, 4, or 21 days?

6 MR. TOOKER: I was talking about a
7 typical 12 month process. But the milestones
8 would be similar, but different timing in the six
9 and the four month process.

10 One of the things that I wanted to bring
11 up, which is present in the four month process
12 that may be able to address some of the
13 flexibility that Neal is talking about, is under
14 AB 970, the four month process defined in that
15 bill required that if applicants were not able to
16 provide sufficient offsets that they could provide
17 money into a mitigation bank. And I was going to
18 impose on perhaps Mr. Nazemi or Mr. Moore to say
19 how, if they were going to be responding in that
20 kind of a process, as an air district, how such a
21 mitigation bank would work where they receive
22 payment and then provide offsets.

23 Mr. Nazemi, are you familiar with that
24 requirement?

25 MR. NAZEMI: I'm familiar with that.

1 However, we haven't crossed that, but we have used
2 a similar approach in some of our settlement
3 agreements and orders of abatement, where the
4 mitigation fee has been put into programs such as
5 Carl Moyer, where we would provide supplemental
6 offsets in lieu of having the source to go out and
7 get it. And that's part of what we are looking at
8 under the RECLAIM amended changes.

9 MR. TOOKER: The thing I'm not aware of
10 is how EPA would look at that for new stationary
11 sources having offsets provided -- if you're
12 assuming that they're not CEC mitigation, but if
13 they're standard regulatory offsets. Duong, are
14 you aware of how EPA would look at that process of
15 providing funding into a mitigation bank?

16 MR. NGUYEN: As far as I'm aware we have
17 not discussed that possibility yet.

18 MR. MOORE: Steve Moore, San Diego. As
19 far as I can recall, for the Otay Mesa project we
20 -- the fees are going to be rolled into our Carl
21 Moyer money. And there is some provision for, I
22 guess, local offsets. Groups in the area have
23 first right of refusal on some of that money.
24 But, you know, there is no standard policy. These
25 things have been done on a case by case basis in

1 other situations.

2 PRESIDING MEMBER LAURIE: Okay. Thank
3 you.

4 Chris, before we go on, let me take this
5 opportunity to call on Mr. Cohn, representative of
6 SMUD, who needs to leave.

7 Good morning, sir.

8 MR. COHN: Thank you very much,
9 Commissioner Laurie and Commissioner Pernell.
10 Always a pleasure to be here, and see our former
11 SMUD director here at the Energy Commission.

12 COMMISSIONER PERNELL: That's not going
13 to get you offsets.

14 (Laughter.)

15 MR. COHN: I tried. All right.

16 As you know, Sacramento is one of the
17 most rapidly growing regions actually in the whole
18 country, let alone in California. And, of course,
19 in our territory, which is mainly Sacramento
20 County, we've seen our load increasing as the
21 population increases, and we have resources for
22 about half our load. And we have tried to have a
23 very balanced program that doesn't rely on any one
24 technology. And over the last five years, we've
25 installed 500 -- or, actually, a little over 400

1 megawatts of natural gas-fired capacity, and over
2 the next few months we'll be adding 44 megawatt
3 peaker at Procter and Gamble.

4 We also are upgrading, or have upgraded
5 the McClellan plant so that that can put out 75
6 megawatts on a more frequent basis. And then we
7 are negotiating with Enron for up to 45 megawatts
8 of wind capacity out in Solano County.

9 But perhaps most significantly is what's
10 on the horizon, and we are looking to add 500
11 megawatts, and possibly even a thousand, at our
12 Rancho Seco site, and that would be gas-fired
13 capacity. And when we look at what the
14 constraints are there, and there are a number of
15 constraints we need -- anybody needs to look at
16 when building a new plant, but certainly for us in
17 the Sacramento region, air offsets are probably
18 the biggest problem that we have.

19 Sacramento has very few banked offsets
20 from stationary sources, and yet 80 percent of the
21 pollution in the region comes from mobile sources.
22 So that's really an untapped source for offsets.
23 And as you may know, I -- I work partly at SMUD
24 and partly as a city council member, and serve on
25 a lot of regional boards dealing with planning and

1 transportation issues, and I can assure you one of
2 the biggest needs in the Sacramento region is for
3 help on reducing those mobile emissions and trying
4 to reduce traffic congestion at the same time.

5 So there's really an opportunity here
6 that has not been tapped, and we're hopeful that
7 working together with the Energy Commission, the
8 EPA, ARB, the -- the air district here, that we
9 can try to make mobile sources more than just a
10 theoretical possibility, but actually see those
11 occur.

12 And the local air district has worked,
13 for example, recently with our area, Sacramento
14 Area Council of Governments, to start a new
15 program that's called SECAT, S-E-C-A-T, in which
16 clean, or diesel engines in trucks and other heavy
17 duty diesel vehicles are either replaced with
18 clean engines or whole new vehicles, either
19 cleaner diesel or alternative fuel vehicles.

20 Certainly, this type of thing would, if
21 that were available where an applicant could
22 invest or put into a program like that, but also I
23 think we need to be a little more imaginative in
24 terms of being able to get money directly to
25 transit districts which, believe me, can use the

1 money. They are sorely in need of money. There's
2 always demand for service. If service is
3 provided, it will be used. But the biggest
4 constraint there is lack of money.

5 So if you have an applicant that's
6 willing -- that has a need to provide power, and a
7 need for the resources there to add to transit, it
8 seems there ought to be a way for us to figure
9 that out. And I know there are a lot of technical
10 issues that have to be resolved, but I think it's
11 incumbent on us to solve those, because that is
12 really the basic public policy problem out there
13 and why we cannot add capacity quickly to the
14 system. And also, obviously, we could be doing it
15 in a way that would solve other societal needs, as
16 well.

17 I do want to indicate, by the way, that
18 we are very thankful to your Staff for helping us
19 most recently in getting more flexibility in
20 amending our Carson permit. Normally, a process
21 like that might have taken well over a year. The
22 problem we had was we were limited to the number
23 of hours we could operate, particularly at the end
24 of a quarter or year, and we had offsets that were
25 available. But normally, that process could've

1 taken well over a year, and with the help of your
2 Staff, we accomplished that in eight days.

3 So I have to say that -- that showed
4 that where there is a will, there is a way, and we
5 certainly appreciate that because our -- our goal
6 is not to lower standards. We -- we definitely
7 want to see the air standards stay high in
8 California. But we have to be a lot more creative
9 in how we apply those and implement those so that
10 we can solve the problem of cleaning the air, but
11 not in a way that prohibits needed capacity from
12 coming in.

13 And that's really the message we want to
14 deliver today. I'd be happy to answer any
15 questions that you may have.

16 PRESIDING MEMBER LAURIE: Thank you, Mr.
17 Cohn.

18 Commissioner Pernell, you didn't
19 inappropriately expedite that process, did you?

20 (Laughter.)

21 COMMISSIONER PERNELL: No, I didn't. I
22 had nothing to do with that.

23 However, I am intrigued that SMUD will
24 be stepping up and looking for innovative ways in
25 order to -- to solve one of the problems we have,

1 not just in northern California but all over the
2 state. So certainly our Staff is willing to work
3 with -- with SMUD and any other generator that has
4 innovative ways, given all of the necessary
5 questions are answered and hurdles are crossed.

6 So we thank you for being here.

7 MR. COHN: Well, we look forward to
8 working with you on that.

9 MR. TOOKER: I want to make one point
10 regarding SMUD, and that is a number of years ago,
11 as Steve remembers, SMUD actually did propose as
12 part of one of its power plant proposals a mobile
13 offset program, which took a lot of initiative on
14 their part, and I believe only withdrew it when it
15 reached a point of regulatory failure where we
16 couldn't get agreement between the needed
17 regulatory agencies to move forward.

18 And I would hope that SMUD would be very
19 interested in re-initiating such a proposal for
20 any big projects they have here.

21 MR. COHN: We -- you're absolutely
22 right. We wanted to do that five -- actually,
23 it's been -- time flies, I think it's actually now
24 seven, eight years ago, but when we were in the
25 permitting of several of our cogen plants. And we

1 -- we very -- not only do we want to, I really
2 feel we have to, because there are not the offsets
3 available. And -- and that's something we'll
4 certainly help you with along with the Sacramento
5 Air Quality Management District, to update your
6 report, because I notice you didn't show the
7 availability of offsets in the Sacramento region.
8 But they are very, very limited, so we really feel
9 that that's going to be a necessity.

10 PRESIDING MEMBER LAURIE: Is Folsom in
11 SMUD?

12 MR. COHN: Yes, it is.

13 PRESIDING MEMBER LAURIE: Your
14 discussion really points to a really critical
15 issue, and that is tying air emission standards
16 and mitigation into other issues. Land use, a
17 critical issue. I'd be interested in having an
18 understanding of what percentage of vehicular use
19 affecting Sacramento's air environment comes from
20 down the hill, and comes from Placer County, as
21 well, and yet there doesn't appear any mechanism
22 to address these issues on a region-wide basis.

23 So not only do we have multiple local
24 jurisdictions, we have multiple air districts,
25 each focusing within its own distinct area. Then

1 we have individual developers whose goal is to
2 address their own particular concerns, quite
3 appropriately. So the question is, who is looking
4 at these issues from a statewide perspective,
5 region-wide perspective, because the -- the
6 problem is a regional problem. It's not a local
7 problem.

8 MR. COHN: Absolutely.

9 PRESIDING MEMBER LAURIE: Thank you, Mr.
10 Cohn, very much.

11 MR. COHN: Well, thank you.

12 PRESIDING MEMBER LAURIE: Mr. Tooker.

13 MR. TOOKER: Yes. If we could go to our
14 next speaker, Gail Ruderman-Feuer, from the
15 Natural Resources Defense Council.

16 PRESIDING MEMBER LAURIE: Welcome,
17 ma'am.

18 MS. RUDERMAN-FEUER: Thank you. Good
19 morning, and I appreciate the opportunity to
20 present comments today. I'd like to address three
21 points.

22 One, just briefly, an issue which we
23 haven't discussed yet, which is the role of
24 conservation and renewables, and I'll be
25 extraordinarily brief, we we'd like to make one point.

1 Second, the question of whether there
2 really is a significant problem with offsets in
3 the state that we need to address. And third, to
4 the extent there is a problem, which fixes, in our
5 view, work, and which don't.

6 And you should have a copy of the
7 comments I'd like to make today, and hopefully I
8 haven't buried you in too much paper. You also
9 should have a copy of our -- a document entitled
10 "NRDC Recommendations for Responsible California
11 Electricity Policy".

12 PRESIDING MEMBER LAURIE: We do not have
13 that.

14 MS. RUDERMAN-FEUER: You do not. Okay.
15 I think --

16 PRESIDING MEMBER LAURIE: Can you hold
17 one, please.

18 MS. RUDERMAN-FEUER: It sounds like
19 they're going to get them for you. But they're
20 lengthier than you're going to want to read at
21 this moment anyway, but there also are some fact
22 sheets, what we call our exposing the myths of
23 California energy crisis, and these are basically
24 to provide you with more detail than what I can --

25 PRESIDING MEMBER LAURIE: That's not a

1 political document, by any chance, is it?

2 (Laughter.)

3 PRESIDING MEMBER LAURIE: Thank you.

4 MS. RUDERMAN-FEUER: Well, it's
5 addressed -- one of these is address to the
6 governor. I'm not sure if that makes it
7 political. But -- and also, there's some -- we
8 also have a letter dealing with the issue of
9 diesel generators, which I know is not the issue
10 today but an issue which will come before you at
11 some point, in terms of whether they have a role
12 in dealing with the energy crisis.

13 COMMISSIONER PERNELL: Is that diesel
14 backup generation, or just --

15 MS. RUDERMAN-FEUER: Correct.

16 COMMISSIONER PERNELL: Okay.

17 MS. RUDERMAN-FEUER: I mean -- and the
18 discussion we have in our letter basically says
19 please, whatever you do, do not increase the use
20 of diesel generators to meet our power needs or
21 we'll end up with a lot of pollution in our
22 communities. So, I know that's not the subject
23 today, but I do have some background information
24 on that issue, as well.

25 PRESIDING MEMBER LAURIE: Well, it is.

1 It is the subject today, if not directly,
2 certainly indirectly.

3 MS. RUDERMAN-FEUER: Okay. Well, I'm
4 happy to address that issue. We do have serious
5 concerns on that, because diesel exhaust is listed
6 both as a cancer causing agent and a toxic air
7 contaminant, and --

8 PRESIDING MEMBER LAURIE: Bottom line,
9 the ultimate question is, is there a conflict
10 between additional power supply and clean air. If
11 so, what is that conflict, and what are the
12 alternatives for addressing that conflict. And
13 that's the basis for all of our discussions today.

14 MS. RUDERMAN-FEUER: Right. And our
15 message to you today, from NRDC and from other
16 environmentalists, is we do not think there is a
17 conflict. We think we can have both. We can have
18 clean air and we can have the power we need for
19 our needs.

20 The first point, just briefly, is I do
21 think renewable energy sources and conservation do
22 play a role in the issues you're considering
23 today, because the best solution to meeting our
24 power needs without compromising the environment
25 is to make sure we need more -- less power. So we

1 do hope that -- and we know this Commission has
2 had a very valuable focus on energy conservation,
3 and we encourage you to keep pushing on that
4 issue, because there have been talks about needing
5 up to 5,000 megawatts of power for the summer.
6 The best way to meet that, or to start meeting
7 that need, is through energy conservation. So
8 that's an important issue I would just like to
9 emphasize.

10 COMMISSIONER PERNELL: And I think on
11 that issue we are moving forward with conservation
12 efforts, both for the short term and long term.
13 And as you probably know, we have done a lot in
14 that area, so we would agree that conservation is
15 one of the elements that we need to address the
16 problem.

17 MS. RUDERMAN-FEUER: And we appreciate,
18 obviously, all the Commission has done on that
19 issue, and just encourage you to keep pushing to
20 get as much as you can on that issue, because we
21 think there are more -- there is more to be gotten
22 in terms of both conservation and renewable
23 resources.

24 The second issue, it sounds like, is the
25 issue that's been addressed by most of the

1 speakers today, which is the question do we have a
2 shortage of offsets. And I think we have heard
3 from some of the air districts that as to some
4 pollutants, we do currently have a shortage of
5 offsets. That would include, for San Diego
6 County, they are short on some of their NOx
7 offsets currently.

8 In the Los Angeles region in the South
9 Coast Air Basin, they may have high prices for NOx
10 credits because of some of the problems with
11 RECLAIM, but there is not a shortage of NOx
12 credits; the shortage is with respect to PM
13 credits to the extent there's a shortage.
14 Sacramento has said to you that they have some
15 concerns about offsets.

16 The key point I want to make is there
17 are some limited situations where there is a need
18 to create more offsets, and I will address how we
19 think we should get there. But the point is it is
20 not everywhere. And --

21 PRESIDING MEMBER LAURIE: As to the
22 question of price, do you agree with the statement
23 that at some price, a project will not be built,
24 and so that is equivalent to no credit
25 availability.

1 MS. RUDERMAN-FEUER: Yes. I mean, I
2 have no -- it is not our position that if a credit
3 -- if a credit costs, you know, \$100,000 a ton, or
4 200,000, or some ridiculous amount of money, at
5 some point it will not be economical to build that
6 project. In the South Coast Air Basin, where I've
7 spent a lot of time working on the RECLAIM
8 Program, the prices in the year 2000 started to
9 skyrocket. But the reason why they skyrocketed
10 was because power plants, since 1993 when the
11 RECLAIM Program was adopted, delayed their
12 installation of controls.

13 If you look at -- when you saw Mr.
14 Nazemi's slide and he showed you the levels of
15 utility emissions dating back from 1993,
16 everything else has gone down, utility emissions
17 went up. And the reason is that more than half of
18 the units at power plants in the South Coast
19 region are uncontrolled. And there's no excuse
20 for that. They should be controlled.

21 So you have the high price of credits
22 because utilities and refineries and a variety of
23 major sources in the region were not controlling,
24 and the allocations of credits were coming down
25 and they finally hit the time where they needed

1 either to buy credits or control, and everyone
2 tried to grab the credits.

3 Moving into the future, though, the
4 analysis by the South Coast Air Quality Management
5 District is that if they put the controls on, put
6 the controls on power plants, put the controls on
7 refineries, the credit price is going to come down
8 dramatically. So that's why we say there is no
9 shortage of credits. What we need, and this
10 really is the centerpiece of our position, is we
11 need to put on cost effective controls. Those
12 controls will reduce emissions and will create the
13 offsets that we need.

14 So the South Coast -- and I'll come back
15 to that in a minute. The South Coast Air Basin,
16 and Mr. Nazemi can comment on it if he likes, my
17 understanding is that there is not and should not
18 be a shortage of NOx credits. The PM issue is
19 separate, it's not covered by the RECLAIM market.

20 The key point I'm trying to make is we
21 recognize that the Energy Commission and the
22 governor and the Resources Board will have to
23 address this offset issue, but we think it would
24 be a huge mistake to address that issue in a
25 blanket way for California, because there are air

1 districts, like San Joaquin, Monterey Bay, the Bay
2 Area, other air districts in the state where there
3 is no offset problem. And we're worried that the
4 fix may be broader than the band-aid which is
5 needed.

6 And there are some air quality
7 implications from the fixes. So --

8 PRESIDING MEMBER LAURIE: So do you --
9 do you believe or not believe that regulatory
10 mechanisms exist to have projects avail themselves
11 of credits that are available, but not in the
12 location where a project is being located? So if
13 one is trying to do a project in Point A because
14 that's where the load is, offsets available in
15 C, where you may not want to put a power plant, do
16 you believe that the regulatory scheme exists
17 where you can effectively transfer those credits
18 to make use of them?

19 MS. RUDERMAN-FEUER: There's several
20 issues raised by your question. One is the issue
21 of inter-district trading, and we would agree with
22 the EPA policy, and we believe what's mandated by
23 the Clean Air Act; you cannot trade credits. If
24 you have credits available in the Bay Area and not
25 in Los Angeles, you cannot trade between those

1 regions because there's no pollution impact
2 between them. So to the extent any trading has
3 been allowed, it has been where there's an
4 upwind/downwind situation with a significant
5 impact on one area on the other.

6 So I think with respect to two regions,
7 there needs to be -- we can't just trade the
8 credits to make the numbers work. We have to
9 make sure there's an air pollution reason for
10 doing the credit trade.

11 But I think there's also another issue
12 raised by your comments, and I was interested to
13 hear the response from Calpine, and I think this
14 was one of the issues that was beyond your -- your
15 area of expertise. It's not clear to us, if you
16 want to provide power to a particular region where
17 there is no offsets, that the power plant has to
18 go there versus somewhere else and have
19 transmission lines. And that's an interesting
20 question. I don't think that's really been
21 explored.

22 PRESIDING MEMBER LAURIE: Mr. Pospisil
23 has indicated that that is beyond your expertise,
24 is that --

25 MR. POSPISIL: Yes.

1 PRESIDING MEMBER LAURIE: All right.

2 MS. RUDERMAN-FEUER: But, I mean, I
3 think it's an interesting issue which should be
4 explored. I think a lot of the discussion and
5 assumptions in terms of offsets, it has to go in a
6 particular place and that it can't go somewhere
7 else where there is the opportunity to put the
8 power plant.

9 Again, that doesn't mean we want to
10 interfere with the siting decision. The key point
11 we think is that we can make offsets available,
12 which comes to the fixes part, if I can move there
13 briefly.

14 So the question of the day seems to be
15 if in the limited area where there are not
16 sufficient offsets, how do we create offsets. And
17 there have been two, at least, ideas floated
18 around, as they've been called, creative
19 solutions. One is the opportunity for trading
20 between mobile sources and stationary sources,
21 basically reducing emissions from mobile sources
22 and using those for the stationary source offsets.
23 And that is what EPA approved in the Otay Mesa
24 situation.

25 My understanding is they have not

1 approved it in any other situation, and their
2 position, as I think was stated earlier, is that
3 it will be addressed on a case by case basis. But
4 that's one possible solution.

5 Another possible --

6 COMMISSIONER PERNELL: Is that one that
7 you would be in agreement with?

8 MS. RUDERMAN-FEUER: We have concerns
9 about mobile to stationary trading, for a number
10 of reasons, and I'll tell you what those are.

11 First, legally. The Clean Air Act we
12 believe says that you cannot create offsets to be
13 used for stationary sources from mobile sources.
14 They need to come from stationary sources. So one
15 is just a pure legal, we think there's a legal
16 problem with it.

17 The second is a policy issue. We have a
18 -- at NRDC have a very strong program on diesel
19 exhaust emissions. It's probably our number one
20 campaign in -- on air quality, is to cut down
21 diesel emissions. So we love the idea of creating
22 lots of money to reduce diesel emissions and we
23 are strong proponents of the Carl Moyer program.

24 However, our concern is that the mobile
25 source credits may not meet the requirement of

1 being real, quantifiable, surplus, and
2 enforceable, which is what the Clean Air Act
3 requires, for a number of reasons.

4 For example, in the Otay Mesa context,
5 the mobile source credits were created in part by
6 --

7 PRESIDING MEMBER LAURIE: Yeah. Let's
8 not go there, because we haven't issued the
9 decision on Otay yet.

10 MS. RUDERMAN-FEUER: Okay. I guess just
11 -- let me just tell you my -- the concern we have
12 is that if you use mobile source credits for a
13 power plant you need to show 30 years of
14 reductions. And the question -- the concern we
15 have is are you really going to get 30 years of
16 reductions out of that mobile source either
17 retrofit or buying alternative fuel vehicles. So
18 we think there are serious problems with the
19 mobile to stationary trade in the long term
20 context.

21 We did not take a position on Otay Mesa.
22 In part, one of the complications is it was coming
23 up at a time when there were no offsets, and so
24 they needed to make a decision quickly. We
25 basically stayed out of it. Our view is that the

1 way to stop that from happening in the future, and
2 we think there is a problem with it, is to get
3 more offsets out of stationary sources. And we
4 think there are lots of offsets to be had.

5 What you need to do is to -- if you
6 retrofit an existing power plant with SCR or
7 SCONOX, basically installing BACT, to the extent
8 that goes beyond the current requirements in that
9 region, you will create ERCs. Right now there's a
10 lot of power plants in the South Coast and around
11 the state that have not been retrofit. So in our
12 view, the best way from a policy and a legal
13 perspective to create the offsets that you need
14 and put them in a bank, is to adopt a rule
15 statewide that requires every existing power plant
16 to bring their standards up to BACT, but allows
17 them to sell those credits. So they get the money
18 from the credits, and those credits can be used
19 either to expand their own capacity or to build
20 new power plants.

21 And that, we think, is the number one
22 way to go. And the analysis by the South Coast
23 AQMD, when they were considering the changes to
24 make to RECLAIM, showed that there were huge
25 reductions which could be achieved if the power

1 plants installed SCR.

2 So our view is let's look at the
3 stationary source sector. Not only power plants,
4 but refineries. For example, when the South Coast
5 looked at refineries and power plants and all
6 these sources, they've said if we require all
7 these companies to install state of the art
8 controls which cost on average \$3300 per ton,
9 right, we're in a whole different world than
10 \$100,000 a ton. \$3300 per ton. They could create
11 26 tons per day of NOx reductions, which
12 translates into 10,000 tons per year.

13 And in my presentation I'm -- we're
14 short of time, so I'm not going to hassle with the
15 overheads. But you have in my presentation
16 materials, when they come to you, you'll see those
17 charts which I took out of the materials from the
18 South Coast AQMD presentation to its board.

19 Ten thousand tons per year of reductions
20 just from installing state of the art known
21 technologies. We think that can happen across the
22 state.

23 So our recommendation is the number one
24 place to go to find those offsets is to require
25 the installation of controls. The problem is that

1 for reasons that aren't quite clear to us, or at
2 least complicated, the financial incentives
3 haven't been enough. In other words, in the South
4 Coast Air Basin, the staff reports have been
5 showing that SCR cost, until 1997, somewhere from
6 \$300 to \$600 a ton. And yet the utilities still
7 didn't install SCR. They just sat and waited in
8 the hope that they wouldn't have to pay the price
9 ever.

10 If the financial incentives aren't
11 enough, then we need to have requirements coming
12 out of the legislature, or the Energy Commission,
13 or the Air Resources Board, however it needs to be
14 done to carry it out, to require the installation
15 of those controls. It will generate the offsets
16 we need in the stationary source sector, and
17 address the current problem. Only as a last
18 resort should we look at the mobile source sector
19 for this problem.

20 The other issue that came up was the
21 issue of mitigation fund. This is a particularly
22 troubling concept for us, and on the slippery
23 slope, if you -- our first choice, we think,
24 should be getting stationary source offsets. As a
25 last resort, then we need to look at mobile source

1 credits for those offsets. But one step down the
2 line in terms of environmental consequences is the
3 mitigation fund concept.

4 The problem we have with that concept is
5 if you want to bring a power plant, let's say to
6 the Los Altos Air Basin -- it's complicated
7 because of RECLAIM. Let's say you want to bring
8 the power plant to San Diego. Instead of in the
9 Otay Mesa situation, they lined up the emission
10 reductions from trash trucks and other sources up
11 front, before they were going ahead with the power
12 plant. What if they just had to pay into a fund?

13 Well, if they had to pay into the fund,
14 you'd have those emissions from the power plant
15 today, but you wouldn't have any guarantee that
16 that fund would actually reduce emissions by a
17 certain date in a certain amount in the future.
18 And we think that's a huge problem for air
19 quality. We can't just throw money at the
20 problem.

21 If you want to have -- if you want to
22 throw money at the problem, the governor has
23 proposed to put \$100 million into an offset bank.
24 If that money is used to create the emissions
25 reductions up front, that's one thing. But

1 allowing a company to site a power plant just by
2 throwing money into a mitigation fund, we think
3 has huge problems in terms of air quality.
4 Because we just don't know when and if and by how
5 much we're going to get the emission reductions.

6 So --

7 COMMISSIONER PERNELL: I'm sure you have
8 articulated that to the governor.

9 MS. RUDERMAN-FEUER: We have -- well,
10 we've articulated to anyone who will listen to us.
11 We -- we have -- certainly that is in our letter
12 to the governor. We have communicated that to the
13 governor's office, to Cal-EPA. It's in our
14 materials we're submitting to you. We feel, as
15 you can see, very strongly about that, that it is
16 a -- an unwise course to take.

17 The other issue that has come up related
18 to this issue, since you mentioned the governor,
19 which is in the executive order, is we have a
20 serious concern that there is an effort by a lot
21 of power plants in the state not only to bring new
22 power sources without cleaning them up
23 sufficiently, but to delay the installation of
24 controls on their existing power plants.

25 The argument has been we have plans to

1 install SCR and we really want to do it, but we
2 need to delay it because that would require us to
3 take our power plant offline while we install the
4 controls. And we have a serious concern about
5 that, as well, because in our view, again, the
6 best way to bring new clean power to the state is
7 to create offsets by retrofitting the old dirty
8 ones. And so it may take two to four weeks to
9 take an individual power source offline to install
10 the new controls, but by reducing those emissions,
11 which we can get down to 95 percent reductions, by
12 reducing those emissions, we can bring new power
13 sources in.

14 So we think it's very short sighted if
15 you delay the installation of controls. And there
16 have been requests, we believe, coming to the
17 Energy Commission, to the Air Resources Board, to
18 the governor, to delay installing controls.

19 For example, there are orders with the
20 AQMD, where they have required power plants in the
21 South Coast Air Basin specifically to install
22 controls in order to get out of their emission, in
23 exchange for getting out of their emission
24 allocations under RECLAIM. And it would be very
25 unfortunate for air quality if those abatement

1 orders don't stick. Because, again, it's those
2 orders that require the installation of controls
3 that will help get us out of the current mess by
4 creating more offsets and creating a long term
5 fix.

6 I think that pretty much covers the key
7 points I want to make. The only other -- two
8 other issues that came up from the other speakers.
9 One was the issue of inter-pollutant trading. We
10 do share the concerns. EPA has raised some
11 concerns about inter-pollutant trading. Our
12 biggest concern about the trades is having -- is
13 having a better understanding of the relationship
14 between NOx and VOCs and the formation of ozone.
15 And I've seen, for example, at the South Coast Air
16 Basin, there's a lot of debate about what
17 combination of VOCs and NOx create ozone, and
18 until we have a better understanding it is very
19 troubling to us to have a trade between those
20 pollutants.

21 A second issue which is a very important
22 issue that has not come up is the issue what is a
23 PM emissions reduction credit. If you're going to
24 allow a power plant to emit fine particles, PM2.5
25 coming from combustion processes, can you use

1 credits coming from paving a road, which creates
2 larger particles. Is that a proper trade.

3 And I believe the position of the -- I
4 forget if it's the Air Resources Board or EPA, so
5 far, is that that is not a good trade. They need
6 to be the same. Our view is -- it's the Air
7 Resources Board. Our view is that those are very
8 different things. A fine particle from combustion
9 is not the same as the larger dust coming from
10 road pavement. So that you need to get the same
11 kinds of offsets. It's almost a form of inter-
12 pollutant trading because they're so different.
13 And that issue hasn't come up.

14 The bottom line is we think that there
15 are many things that this Commission can do to
16 create offsets without compromising air quality,
17 and we strongly encourage you to go down that path
18 before the path which is more troubling, including
19 mobile to stationary trading and mitigation funds.
20 And to the extent you go down that path, that you
21 need to do it as a band-aid approach in the
22 individual districts where it's needed, and not
23 for the entire state, or we may find air quality
24 being -- deteriorating in those other areas where
25 it wasn't necessary.

1 PRESIDING MEMBER LAURIE: Thank you,
2 ma'am, very much.

3 COMMISSIONER PERNELL: Just one quick
4 statement, so that you can be clear on what we're
5 trying to do. Let me just state that we're not
6 trying to eliminate any environmental regulations
7 or to add any additional pollutants into the air.
8 What we are doing is taking information. I think
9 you're a very worthy advocate for -- for your
10 cause, but I don't think that -- and I don't want
11 you leaving here with the impression that this
12 Commission is trying to weaken any of the CEQA
13 laws whatsoever.

14 And -- and not -- I also don't think
15 that the governor and the administration is trying
16 to do that. We are simply trying to address a
17 problem that the state has on a short term basis,
18 as well as a long term basis, and I would
19 encourage you to continue to work with our Staff
20 on some of your ideas. I do think they are good
21 ones, but I don't want you to leave with the wrong
22 impression about what this Commission is trying to
23 achieve.

24 MS. RUDERMAN-FEUER: I -- if I could
25 just say, I appreciate that, and our expectation

1 is that the Commission and the governor will go
2 down the right path. I mean, our hope is we would
3 like to work with you to make that -- that happen.
4 But we do think there are a lot of efforts to urge
5 you to go down the wrong path, so we'd like to
6 keep the pressure on to make sure it is consistent
7 with air quality goals.

8 COMMISSIONER PERNELL: Point well taken.

9 PRESIDING MEMBER LAURIE: Pressure
10 enough to go around.

11 Mr. Tooker.

12 MR. TOOKER: Yes, Commissioner. I would
13 suggest at this point that we provide an
14 opportunity for anybody in the audience who might
15 have questions or wants to make comments regarding
16 the topic of this morning's discussions, before
17 breaking for lunch.

18 PRESIDING MEMBER LAURIE: Thank you. We
19 will do that. We have three representatives from
20 Communities for a Better Environment that have
21 requested to speak.

22 Why don't you folks determine which one
23 of you is going to speak at this time, and that
24 person is free to come forward at this time. If
25 there's time after everybody else gets a chance,

1 then we'll call on a second.

2 MR. TOOKER: Commissioner, while they're
3 doing that also, I would like to inform everyone
4 in the audience that we have run out of copies of
5 some of the handouts. We will be making
6 additional copies during the noon break, and have
7 those copies available when we resume.

8 PRESIDING MEMBER LAURIE: Okay. Hi.

9 MS. SIMON: Hi. Thank you. I'm Anne
10 Simon from Communities for a Better Environment.
11 We all turned in cards because we didn't realize
12 that they were going to be separate for the
13 morning and afternoon. So if you could -- could
14 hold on to Ms. Peesapati's for the afternoon, I
15 think.

16 I would like to make two observations in
17 -- in relation to this process. One is that I
18 think that many of the people who are involved in
19 this important effort to try to figure out what to
20 do have fallen into a trap that the modification
21 of offsets sets for us, which is to think of air
22 quality offsets like pipes or rivets, or other
23 physical inputs into the physical construction of
24 power plants. They're not. They're congealed air
25 pollution, and they can't be moved around like

1 pipes or rivets in the same way, nor should they
2 be, because the policy of the Clean Air Act is no
3 new pollution without more reduction in old
4 pollution. That's what offsets are.

5 So that the attempt to create offsets
6 that are not really related to improvement in air
7 quality in order to have them as construction
8 inputs is inconsistent with what the national goal
9 for air quality is. And I think at any given
10 moment, in thinking about a particular problem, a
11 particular policy problem or particular permitting
12 problem, it doesn't look that way to us. What we
13 see is our particular problem.

14 But I think it might be worthwhile, with
15 so many people spending so much really good and
16 concentrated effort on this problem, to step back
17 a little bit and think about the -- to de-
18 commodify offsets for a minute, even though there
19 are trading markets in ERCs and the particular
20 RECLAIM trading market in the South Coast, and
21 think about what that pollution, congealed
22 pollution really is.

23 The -- actually, I have three points.
24 The second point which I would like to make, very
25 briefly, is to urge everyone here to just give it

1 up about these mobile to stationary trades.
2 They're not legal under the Clean Air Act. And
3 people are wasting a tremendous amount of effort
4 in trying to figure out how to make them look
5 legal if they look like good policy. And it would
6 seem -- seem to me that all that effort and
7 creativity ought to be directed into areas that
8 will be able to have a constructive outcome. And
9 mobile to stationary source trades under the Clean
10 Air Act does not look to us as though it will be
11 ultimately constructive.

12 The -- I'm sorry, sir.

13 COMMISSIONER PERNELL: I have a question
14 on that.

15 MS. SIMON: Yes.

16 COMMISSIONER PERNELL: Whether or not
17 it's legal or not is -- I'm not an attorney, so
18 I'm not going to debate that. But let me ask you
19 a question. As it relates to vehicle trips in a
20 certain area, and where you've got freeways just
21 in a logjam. So the scenario is that if you --
22 which is an existing source of pollution. And --
23 and from what I've been hearing this morning, is
24 that if -- one of the ways in which you can create
25 offsets is if you either eliminate or decrease

1 existing pollution.

2 Given that statement, the scenario that
3 was put forth by the representative from the
4 Sacramento Municipal Utility District, would you
5 consider that a viable scenario?

6 MS. SIMON: Well, unfortunately,
7 Commissioner Pernell, I don't consider a scenario
8 viable if it's not legal under the Clean Air Act.
9 So, no. But setting that aside, in policy terms,
10 I'd like to refer you back to what Ms. Feuer
11 pointed out in her presentation, which is that the
12 number of years that a large stationary source,
13 such as a power plant, is intended to operate is
14 significantly longer than the number of years that
15 most polluting sources are going to be on the
16 road, so that there is -- it is very unclear, even
17 if one wanted to look at such trades independent
18 of their legality, it's completely unclear that
19 there's a way to connect in number of years to
20 structure a mobile to stationary source trade such
21 that you would actually be getting the right
22 reductions for your stationary source.

23 COMMISSIONER PERNELL: Right. I'm not
24 -- I don't want to debate this, so just indulge me
25 for a couple more seconds. And that is we can

1 assume that in a number of years, that all of the
2 cars are suddenly going to go off the freeway and
3 go away if we don't have public transportation.
4 So I guess my point is that you can assume that a
5 power plant, or a facility is going to pollute for
6 30 years, but you're not making the same
7 assumption that people are going to have to get to
8 work and going to have to have some form of
9 transportation for the -- for the next 30 years.

10 So I'm just saying that if you're going
11 to -- if you're going to wear it on one side, you
12 also have to look at the other side because
13 regardless of whether we want it to happen or not,
14 the fact of the matter is our freeways are
15 congested, and people are sitting on those
16 freeways polluting the air, and a lot of that is
17 because we don't have adequate public
18 transportation.

19 So I'll just leave it at that, and
20 please go on.

21 MS. SIMON: Yes. I couldn't agree with
22 you more. CBE couldn't agree with you more about
23 that. In fact, we just -- we've been concerned
24 about that for a number of years, and I would
25 suggest merely that increasing public transit and

1 reduction in pollution from mobile sources is
2 absolutely essential to do for its own sake. And
3 so I think we are in agreement about that.

4 And the -- the last point --

5 PRESIDING MEMBER LAURIE: We do have to
6 give other speakers an opportunity.

7 MS. SIMON: Then --

8 PRESIDING MEMBER LAURIE: So if you can
9 give us about one more minute, we would look
10 forward to that.

11 MS. SIMON: I have exactly one more
12 minute. Which is to urge the Commission in
13 considering all of these issues about offsets,
14 about controls on existing facilities and on
15 location constraints, which Commissioner Laurie,
16 you've been particularly interested in, to
17 remember that there are questions of environmental
18 justice involved in location, that concentrating
19 new power plants or repowered and more extensive
20 power plants in areas which are already
21 overburdened with other sources of pollution,
22 whether or not it looks to be efficient, may not
23 be the right thing to do.

24 And the Commission needs to look very
25 carefully at the entire range of impacts on people

1 of power plant siting decisions, and not only on
2 the technical considerations that seem to be
3 driving some of the questions and some of the
4 interchange here.

5 Thank you very much.

6 PRESIDING MEMBER LAURIE: Thank you, Ms.
7 Simon.

8 Ms. Tuck.

9 We will be taking public comment this
10 afternoon, as well, so those of you that have made
11 a request to speak that will be here this
12 afternoon, feel free to indicate a willingness to
13 delay your comments.

14 Ms. Tuck, good morning.

15 MS. TUCK: Thank you. Good afternoon.
16 We certainly appreciate the opportunity to be here
17 this morning. We appreciate that the Commission
18 is holding this hearing. We think it's very
19 timely.

20 We believe there is a shortage of
21 credits, particularly --

22 PRESIDING MEMBER LAURIE: Can you
23 indicate who "we" are?

24 MS. TUCK: Yes. Thank you. Cindy Tuck,
25 with the California Council for Environmental and

1 Economic Balance. I'm trying to be quick, but I'm
2 obviously trying to be too quick.

3 We have three suggestions this morning.
4 The first one has to do with the stringency of the
5 offset requirements. As you know, California has
6 the most stringent air quality requirements in the
7 country. We're not suggesting changing the
8 standards by any means, but we would like to
9 suggest that the CEC shouldn't go beyond what's
10 required by federal law and state law and the
11 district rules and regulations. So we'd suggest
12 that if there's situations where a project is
13 coming before the Commission and the Staff is
14 suggesting, for example, additional PM offsets or
15 mitigation, that the Commission really look at the
16 situation when it's going beyond what's required
17 by federal or state law. Just look at that
18 carefully.

19 That's our first point. The second
20 point has to do with an issue that the EPA
21 representative raised, which is an EPA policy on
22 discounting credits at the time of use. This is
23 the RACT adjustment issue. And the EPA
24 representative stated that it's required. The San
25 Diego representative said that they have concerns

1 about that requirement. And we would suggest that
2 it's not required by the federal Clean Air Act.
3 It's not in any EPA regulation. It's -- where
4 it's set forth is in an EPA internal guidance memo
5 out of Washington that never went under any
6 opportunity for notice or public comment.

7 And so we really think that the state
8 should challenge that policy because it's a policy
9 that's requiring discounting of credits where it's
10 not required by law. So that's something -- and
11 we would be glad to provide the Commissioners and
12 Staff with more information on that issue at
13 another time.

14 The third and last issue I'd like to
15 raise has to do with a paragraph that's in the
16 Staff report, and one of the labels -- it's on
17 page 11, and it has to do with credit hoarding.
18 That really hasn't been discussed this morning --

19 COMMISSIONER PERNELL: With credit what?

20 MS. TUCK: The word the Staff used was
21 hoarding, h-o-a-r-d-i-n-g.

22 PRESIDING MEMBER LAURIE: Credit
23 hoarding.

24 MS. TUCK: And this is a reference to
25 where companies have traditionally banked their

1 emissions and ERCs and they've been in the bank
2 for a period of time.

3 And we just say that the existing system
4 allows companies which, if they voluntarily reduce
5 emissions, they get to bank those emission
6 reductions in the bank and that's what becomes the
7 -- part of the offset system.

8 And businesses that are doing
9 responsible planning, that think they're going to
10 try to grow later or modify their facility, they
11 have made a decision to voluntarily reduce their
12 emissions and bank them. So they've done that in
13 a responsible manner. They shouldn't be forced to
14 sell those credits because of the power crisis.

15 So we just wanted to note that there's
16 another side to that issue which isn't in the
17 Staff report. Wanted to make sure you're aware of
18 that.

19 PRESIDING MEMBER LAURIE: Thank you.
20 Thank you, Ms. Tuck, very much.

21 COMMISSIONER PERNELL: Could I ask the
22 EPA representative to respond to one of the issues
23 that were raised?

24 MR. NGUYEN: Yeah, let me just clarify
25 that. The RACT adjustment requirement means that

1 at the time of use, whatever available offsets
2 that a source wants to use have to be adjusted,
3 have to be reduced, to take into account the
4 amount of the level of control that is currently
5 required. That means that the available offsets
6 would go down, you know. So -- so in terms of
7 environmental concerns, I thought it would be a
8 plus, not a minus.

9 PRESIDING MEMBER LAURIE: Okay. Well,
10 we can spend a lot of time on this, and maybe we
11 need a separate discussion to get a better
12 understanding of what the issue is.

13 Did you want to take time now to do
14 that, Commissioner Pernell, or do you want to wait
15 and see what we have at the end of the day?

16 COMMISSIONER PERNELL: Well, I would
17 recommend that perhaps during lunch, you get
18 together and maybe that's a misunderstanding of
19 how it works. But at the end of the day, if it's
20 not resolved, perhaps we can take it up then.

21 PRESIDING MEMBER LAURIE: Thank you.

22 Mr. Martin. Good afternoon, sir.

23 MR. MARTIN: Good afternoon, Mr.

24 Chairman, Commissioners. I will be mercifully
25 brief. My name is Jim Martin. I'm a Senior

1 Policy Analyst for Environmental Defense in their
2 Oakland, California office. I have just a few,
3 very few comments after the excellent panel you've
4 already heard from today.

5 PRESIDING MEMBER LAURIE: Can everybody
6 hear okay? A little closer to the microphone,
7 sir.

8 MR. MARTIN: I'll try to speak up.

9 I appreciate the opportunity to be here,
10 and I especially appreciate your willingness to
11 tackle this subject, and I only hope that at this
12 point you haven't concluded that the subject of
13 emissions offsets or emissions credits isn't
14 hopelessly complex. I have one special plea here,
15 and, as I said, I will be very, very brief.

16 We have done a lot of work over the last
17 year or so on one particular criteria pollutant.
18 That's nitrogen oxide. It's one of the pollutants
19 that's emitted from power plants as well as from
20 mobile sources, as well. I will confess I've
21 never appeared before you, Mr. Chairman, so I
22 don't know the protocol. I have some reports that
23 cover the subject of my comments, so if I can
24 submit those --

25 PRESIDING MEMBER LAURIE: The protocol

1 is Staff would be happy to receive your input.

2 MR. MARTIN: Great. Well, then --

3 PRESIDING MEMBER LAURIE: Provide such
4 to Mr. Tooker and Mr. Layton, and they will be
5 happy to share it with us.

6 MR. MARTIN: That will make my comments
7 even briefer.

8 The report is a compilation of the most
9 recent scientific data and monitoring data that's
10 available on the issue or the subject of nitrogen
11 oxides. We're particularly concerned about NOx,
12 which is one of the pollutants that's the subject
13 of emission -- of emissions trading, because of
14 its role in a number of different pollution
15 problems that contributes to the formation of
16 smog, as well as to the formation of fine
17 particulates, both of which pose significant
18 health effects problems for people who are exposed
19 to those pollutants.

20 It also contributed to the formation of
21 acid deposition, as well as to nitrogen deposition
22 downwind of sources. It's also a significant
23 contributor here in California, as well as
24 elsewhere, to the formation of haze and what are
25 called Class 1 areas, national parks and

1 wilderness areas, places like Yosemite, Sequoia
2 National Park, San Gregorio -- the wilderness area
3 out there.

4 But perhaps most important, one of our
5 principal causes of concern or what's led us to
6 this juncture is that unlike all of the other
7 criteria pollutants, which are declining in
8 concentrations, declining in ambient
9 concentrations, nitrogen oxide nationwide,
10 regionally in California is increasing. It's the
11 one pollutant about which the good news over the
12 last 30 years really isn't good news. It's
13 increasing in its ubiquity in the environment.

14 It gives us -- therefore it causes us
15 real concern, and I think it -- if I have one plea
16 that I can make before you, it would be that as
17 you look at the creative and innovative ways we
18 can handle offsets and solve this dilemma of the
19 need for more power, as well as air pollution
20 problems, that you take special and perhaps even
21 extraordinary care in dealing with nitrogen
22 oxides, because it's a pollutant that's increasing
23 throughout the country, and its complexity is
24 perhaps even greater than the complexity you find
25 with a number of these other pollutants.

1 And with that, I said I'd be mercifully
2 brief, perhaps too brief. But I appreciate the
3 opportunity to be here.

4 PRESIDING MEMBER LAURIE: Thank you, Mr.
5 Martin. We very much appreciate it.

6 MR. MARTIN: Thank you.

7 PRESIDING MEMBER LAURIE: Thank you,
8 sir.

9 I'm sorry, Commissioner Pernell, did --

10 COMMISSIONER PERNELL: Well, no, I was
11 just directing him to Mr. Tooker.

12 PRESIDING MEMBER LAURIE: Thank you.

13 MR. TOOKER: At this point I would
14 suggest, if there are no further comments from the
15 public --

16 PRESIDING MEMBER LAURIE: No, there's a
17 bunch of comments from the public. That's why I'm
18 trying to do this.

19 Again, we have -- is it Mr. or Ms.
20 Talwar? Sir. And then we have Mr. Grattan, Mr.
21 Murray, and Mr. Allen.

22 MR. TALWAR: Thank you. My name is
23 Mahesh Talwar. I am President of OceanAir
24 Environmental.

25 PRESIDING MEMBER LAURIE: Yes, sir.

1 MR. TALWAR: A couple of comments in
2 terms of discrepancies between various agencies
3 and speakers and environmental groups, as well.

4 We heard from NRDC and EDC. The speaker
5 was here prior to me. NRDC seemed to take a
6 position that mobile source emission reduction
7 credits are troubling. And they did not take a
8 position in the case of San Diego.

9 I had a call for projects from EDC
10 saying the San Diego project was extremely good,
11 and they want to duplicate that model nationwide.
12 So I'd encourage various environmental groups to
13 also have one common opinion and support whatever
14 is the right thing for environmental cause to do.

15 Second, discrepancy in agencies
16 themselves. We have Carl Moyer program. Under
17 that, they fund various air pollution reduction
18 programs, and guess where the reductions go? The
19 reductions go in meeting the obligation which
20 various air districts ultimately give to state.
21 State takes those credits and counts them towards
22 meeting the obligation under SIP. Okay.

23 Basically, under SIP they're required to
24 have certain amount of pollution reduction. Now,
25 what happens is those do not have to conform

1 strictly to surplus, quantifiable, permanent and
2 enforceable, you heard, because under state bill
3 that produced the Carl Moyer program allowed these
4 things to be counted. While, when we apply the
5 stationary sources, getting reductions from
6 untraditional sources, they have to go through a
7 whole series of environmental events.

8 So I would encourage that there should
9 be some commonality between the two programs so we
10 are still doing the right thing, cleaning up the
11 air, but less complexity in doing so.

12 I also want to also pick up the issue of
13 RACT adjustment. We deal with power plant
14 companies exclusively. The credits that are in
15 the bank, they can be adjusted and they have been
16 adjusted going in, meaning when the company was
17 banking those credits, they got reviewed, they got
18 sent to EPA, CARB and other agencies, as well.
19 They got adjusted for reasonably available control
20 technology at that point in time.

21 I think that is the issue here. When do
22 you RACT adjust? Coming out of the bank, when
23 they are going to be used by power plant. We
24 don't know if Company XYZ has relied on those
25 credits, they bought those credits from a seller,

1 all of a sudden they go, air district says fine,
2 they generally don't object to that. And ten
3 months later they go for review higher up within
4 EPA, and lo and behold, they get RACT adjusted,
5 they get discounted by 70 percent. All of a
6 sudden, there is a crunch.

7 That is the real -- that's really the
8 issue, and we will, you know, there was a lot of
9 other things associated with that, but I just
10 wanted to make sure the issue is clearly
11 understood.

12 And lastly, I want to also address the
13 issue of power -- creating emission reductions
14 from power plants, existing power plants. I don't
15 think I'm wrong, but to my understanding and
16 knowledge, most of the power plants in the state
17 eventually on a timetable are required to clean up
18 their emissions anyway to a level down to a CR
19 controls. And therefore, the reductions from them
20 may not be surplus long term, thus creating
21 offsets for new power plants. That issue needs to
22 be explored further.

23 On the issue of PM10 credits versus
24 PM2.5, the current regulations say basically PM10
25 credits are required. PM2.5 is not in any law at

1 this point in time. We get into a debate whether
2 2.5 is more detrimental to public health. Then
3 you look at PM10, it's composed of three things,
4 sulfate, nitrate, and soluble organic fraction.
5 One PM10 source may have more sulfate, one PM10
6 source may have more nitrate, other one may have
7 more soluble organic fraction. Then you get into
8 debate, debate that in PM10, which one is better
9 for public health.

10 So I'll encourage all parties to look at
11 it within the context of existing laws and
12 regulations. So I guess I'm not debating PM2.5 is
13 more detrimental than PM10. But if you look at
14 the whole situation within the context of one set
15 of laws, it provides more certainty to all parties
16 involved.

17 Thank you.

18 PRESIDING MEMBER LAURIE: Thank you, Mr.
19 Talwar.

20 Mr. Grattan.

21 MR. GRATTAN: Good afternoon, and I will
22 be brief.

23 I want to point out a problem and
24 propose a solution, and solicit the Commission's
25 help in getting to that solution.

1 The problem lies with Section
2 25523(d)(2) of the Public Resources Code --

3 PRESIDING MEMBER LAURIE: 25523(d)(2)?

4 MR. GRATTAN: Yes. In the Warren
5 Alquist Act. And that requires an applicant,
6 before that applicant can receive a license from
7 the Commission, to have obtained the offsets
8 required to offset that plant, the emission --

9 PRESIDING MEMBER LAURIE: Before we
10 certify.

11 MR. GRATTAN: Before we certify,
12 exactly. Before you certify. That requirement is
13 more stringent than most district requirements and
14 certainly more stringent than federal law.

15 Let me point out one example where this
16 provision not only makes life difficult for the
17 applicant and difficult to permit power plants on
18 a -- on a, you know, a fairly expedited basis, but
19 also impedes air quality -- creation of air
20 quality benefits. And I'll give you an example.

21 I have a client who proposed a 500
22 megawatt power plant. He had a choice for
23 offsets. He could go to a compressor station
24 which was almost onsite, a lot of emissions from
25 that compressor station, and electrify that

1 compressor station so the emissions went down to
2 zero.

3 In order to do that, however, first you
4 have to negotiate with the owner of the compressor
5 station. Then you have to, assuming you get
6 through that, then you have to contract for the
7 work. And then you have to actually make the
8 retrofits, create the offset, which needs to be
9 approved by the local district, and surrender the
10 offsets. To do that within the one year
11 timeframe, let alone the six month timeframe, is
12 daunting, if not impossible.

13 So what that applicant did was find
14 already banked offsets a good distance away, and
15 utilized those. Nothing wrong with that, but an
16 opportunity to create a local air quality benefit
17 was foregone.

18 My suggestion, and we're taking this to
19 the legislature, is that offsets need to be
20 identified as a condition precedent to -- to
21 getting a license from here, but that offsets only
22 have to be obtained 30 days prior to commencement
23 of commercial operation.

24 PRESIDING MEMBER LAURIE: Can you get
25 financing without offsets?

1 MR. GRATTAN: You can get financing if
2 you identify the offsets, and if you have -- if
3 you've taken certain steps. And -- and we would,
4 you know, we would not propose to just come in
5 with a song and a dance about offsets, but to
6 clearly identify and have them be obtainable.

7 COMMISSIONER PERNELL: So given -- let
8 me give you a scenario that you probably wouldn't
9 agree with, but --

10 MR. GRATTAN: You can't disagree with
11 scenarios.

12 COMMISSIONER PERNELL: -- consider --
13 consider the fact that you go through this. You
14 have -- you give us something that says I have
15 offsets that we're working on. We give you a
16 certificate of certification, you start building
17 your plant, and the offsets that you thought you
18 had you don't have.

19 What happens in that scenario where
20 you're applying dependent -- relying upon your
21 expertise, and are out of, you know, millions of
22 dollars and still no offsets? Certainly you can't
23 operate, or there would be a lot of pressure on
24 air districts to allow you to operate, which I'm
25 sure folks like NRDC wouldn't approve of.

1 MR. GRATAN: First, good question.

2 First, you have to understand that this is a
3 requirement of the Warren Alquist Act. It is not
4 a requirement of federal air quality law or most
5 district regulations. This is an added thing in
6 the -- the Warren Alquist Act.

7 Two, number one, I think the applicant
8 and the applicant's investors would only take that
9 risk if the offsets were identified and if perhaps
10 there was a contract for the work, the retrofit
11 work to be done, that the work need not have taken
12 place in order to get financing, and it need not
13 have taken place -- I propose it need not take
14 place in order to get a license, that the risk is
15 very little and the applicant should take that
16 risk. It shouldn't be -- it shouldn't be the
17 Commission or the public's risk. If the applicant
18 is willing to take it, you ought to let the
19 applicant take it.

20 COMMISSIONER PERNELL: So you're in
21 agreement that if they don't get the offsets, the
22 whole project should cease to exist.

23 MR. GRATAN: Well, the applicant should
24 find other offsets. But the applicant should not
25 be allowed to operate without offsets.

1 PRESIDING MEMBER LAURIE: How much more
2 would it cost you to get your offsets -- offsets
3 post certification than pre certification?

4 MR. GRATAN: How much -- oh, I imagine
5 -- I imagine the market would change. But again,
6 I'm just suggesting that in the interest of air
7 quality, in the interest of speeding this, that
8 the Warren Alquist Act ought not to be tougher
9 than the existing regulatory schema.

10 PRESIDING MEMBER LAURIE: Thank you,
11 sir. Thank you, John.

12 Mr. Murray. No Otay Mesa. Generic is
13 good. No Otay Mesa.

14 MR. MURRAY: No Otay Mesa.

15 My name is Mike Murray, and I am here on
16 behalf of Sempra Energy today.

17 PRESIDING MEMBER LAURIE: Do you want to
18 share that with us?

19 (Laughter.)

20 MR. MURRAY: I should've turned that --
21 and I've actually been busy for the last several
22 months, like a lot of us over at the white
23 building, just trying to make sure the lights stay
24 on. And we believe that this discussion today is
25 invaluable in that whole debate, and to make sure

1 that the lights go on.

2 We are seeing this as both the short
3 term and the long term problem. I can assure you
4 that the 5,000 megawatt shortfall that we
5 anticipate for the summer of 2001 and 2002 are
6 very real. We believe that those numbers are, in
7 fact, based on sound forecasts. We think that
8 there's three ways that we'd bring to address
9 that. One, of course, is the conservation piece,
10 which we believe is a very valuable component of
11 that. We don't think you get there, though, with
12 just conservation, so we need the interruptible
13 piece which we are again pursuing through
14 legislation to make sure that our interruptible
15 programs continue.

16 And, of course, the third piece, which
17 is what we're discussing today, is how do we site
18 these facilities in an expedited fashion and make
19 sure at the same time we maintain the standards
20 that are currently in place.

21 Along those lines, we are exploring
22 opportunities in San Diego, through our Sempra
23 Energy resources, where we may be able to site
24 generation. Of course, one of the constraints is
25 the lack of availability of offsets. We firmly

1 believe that it makes sense to site facilities
2 near load centers, because I can tell you that
3 siting transmission is at least as difficult as
4 siting generation. But on the other hand, if you
5 don't have transmission facilities it does you no
6 good to have these power facilities sitting there.

7 So that's something that we have to
8 consider in the mix.

9 PRESIDING MEMBER LAURIE: Do you have an
10 understanding about the efficiency factor? Is
11 there a voltage loss based upon transmission?

12 MR. MURRAY: There's line losses. My
13 understanding is, is that they don't become a
14 significant part of the equation until it's a
15 rather long distance, like if you're bringing in
16 power from Wyoming. But for -- for rather minor
17 distances, the line losses are -- are not a
18 significant factor. But again, you're outside my
19 realm of expertise. That's what I hear from our
20 folks.

21 But two things I think that are critical
22 to this that have been discussed today, that we
23 don't see a lot of these projects going forward
24 unless we talk about the mobile versus stationary
25 credit issue. We think that that's a critical

1 component that we need to have some kind of
2 mechanism to allow for mobile versus stationary
3 transfers.

4 And the other is the discussion about
5 the inter-district transfers, where you have the
6 ability when it's available and appropriate to
7 provide for inter-district transfers of
8 pollutants.

9 Thank you.

10 PRESIDING MEMBER LAURIE: Thank you, Mr.
11 Murray.

12 MR. MURRAY: Thank you.

13 PRESIDING MEMBER LAURIE: Mr. Allen.

14 MR. ALLEN: Good afternoon. I'm Larry
15 Allen. I'm with the San Luis Obispo County Air
16 Pollution Control District.

17 I'm --

18 COMMISSIONER PERNELL: Which one is
19 that? I'm sorry.

20 MR. ALLEN: San Luis Obispo County, down
21 along the coast.

22 And I'm also current Chair of the
23 California Air Pollution Control Officers,
24 Planning Managers Association, and the -- that's
25 CAPCOA is the acronym. And that represents all

1 the air pollution control districts in California.

2 And the districts are definitely acutely
3 aware of the ERC shortage situation, and the
4 CAPCOA, as a group, is looking at trying to
5 undertake a study on how to deal with this issue,
6 not just for the power plants in general, but also
7 for all the sources out there that may need to
8 obtain ERCs in the future.

9 And so we've been tasked with trying to
10 deal with that, and it's going to be a long term
11 effort, I think. But we've started the
12 conversation. As you know, the South Coast also
13 has an advisory panel that's looking into this
14 issue specifically, and are coming up with
15 recommendations. I'm sure that we'll work with
16 them.

17 But I guess one of the key issues that
18 came up in all of this, when we started looking at
19 it, was the fact that the districts are concerned
20 that the incredible use of ERCs by the power
21 plants, you know, the large build-up of power
22 plants that is currently occurring, that is
23 proposed for the future, is going to deplete
24 available supply out there for other industry that
25 may need to use these. So we're very concerned

1 about trying to come up with a solution for that.

2 And one of the key issues, and I think
3 that EPA and the Air Resources Board shares this,
4 and I know that the South Coast has talked about
5 this in their efforts, is that the surge for ERCs
6 seems to be superseding efforts to advance control
7 technologies that can actually reduce the need for
8 that. I think that the power plants are trying to
9 pick the plums out there, and it's -- it's
10 reducing the supply and driving up the cost, when
11 in fact there are controls that are available at
12 the facilities themselves.

13 New technology, in particular the -- is
14 available out there. SCONOX, for one, can
15 significantly reduce the need for NOx offsets, for
16 PM offsets, and for carbon monoxide offsets. But
17 because we don't have a proven plant of this 500
18 megawatt size in practice, it's been difficult to
19 actually get the sources to agree to commit to
20 that. Some of them have agreed to it, but there
21 are a lot of qualifications that are placed on
22 those agreements.

23 Also, encouraging the project applicants
24 to try and meet their requirements by looking at
25 facilities nearby that are actually

1 undercontrolled or maybe even unregulated, and
2 trying to reduce emissions there. The previous
3 speaker had a good point, and I think this is
4 something that we need to look at much more
5 strongly in trying to get controls of facilities
6 that are undercontrolled. Our own permitting
7 requirements, and certainly the CEC's permitting
8 requirements work against us a little bit there,
9 because of the need to have those offsets in place
10 before facilities begin their operations.
11 Sometimes, in the CEC case, before they even begin
12 construction.

13 And we may need to look at modifying our
14 rules to allow that to be accomplished, or to look
15 at some interim types of offsets that can be put
16 in place before those controls are available at
17 nearby existing facilities, like using mobile
18 source emission reduction credits to fill the gap
19 before we can actually get those in place.

20 And I think that that might be a good
21 thing to look at requiring that search before they
22 start picking up the ERCs that are out there and
23 available.

24 I think it would be very good to have
25 energy facilities that have the resources to do

1 this, just go out and do some surveys in districts
2 and looking at what types of emission reductions
3 are available from unpermitted sources. This is a
4 fairly expensive and time consuming process.
5 There are a lot of sources out there. For
6 instance, agricultural irrigation pumps out there,
7 that have the significant potential for providing
8 emission reduction credits, but a lot of districts
9 don't know where they are, how many there are, how
10 often they operate, what their fuels are, and so
11 forth. And it would be good to conduct a survey
12 like that, I think.

13 The -- some of our own control
14 requirements sort of exacerbate the shortage of
15 ERCs by increasing emissions of one pollutant when
16 you're decreasing emissions of another one. For
17 instance, sometimes carbon monoxide catalysts can
18 increase emissions of PM10, so you increase a
19 requirement for PM10 offsets there. That's not a
20 problem for some of the control technologies, like
21 SCONOX.

22 I think that the -- the shortage of PM10
23 offsets has significantly increased the use of NOx
24 offsets as inter-pollutant trades, and is going to
25 significantly reduce that supply because the

1 trading ratios that are required there are
2 typically beyond two to one. So that can be a
3 difficulty there. There may be some things that
4 we can look at. For instance, giving greater
5 offset credit for PM reductions from diesel
6 equipment, which has a much greater health impact
7 than PM emissions from off road -- from unpaved
8 roads and so forth.

9 And I think that's pretty much my
10 comments. I didn't really have anything prepared.
11 I just wanted to make you aware of the fact that
12 CAPCOA is looking at this. We intend to spend a
13 long time in trying to come up with a solution,
14 and we're trying to marshal all of the important
15 players to look at the problem.

16 I would like to echo the fact that just
17 personally, anytime I have a chance to address you
18 guys, I believe that conservation is an incredibly
19 important part of this in trying to reduce the
20 actual need for the ERCs through the -- by
21 reducing the demand for the power plants. We are
22 right now determining our energy future out there
23 by the number of power plants that we have being
24 proposed right now, with very little focus on
25 renewable technologies, because they can't compete

1 right now. And they don't have the financial
2 resources to actually bring these proposals to the
3 table at the moment.

4 And I think that that's a -- a big
5 problem, and to the extent that we can delay the
6 need for new capacity by increasing our
7 conservation efforts, I think that we allow a
8 better promise for those technologies in the
9 future.

10 PRESIDING MEMBER LAURIE: Thank you, Mr.
11 Allen, very much.

12 COMMISSIONER PERNELL: One question.
13 You mentioned new technologies, SCONOX. Are you
14 aware of any existing facility that are 500
15 megawatts or more that are using this technology?

16 MR. ALLEN: Not at the moment. I know
17 that there are -- and probably Chris Tooker could
18 address this better than I can, because I haven't
19 followed all the projects. There are at least two
20 or three projects that have committed to install
21 it on one turbine, as a demonstration. But I'm
22 not sure what the status of those are right now.

23 I do know that EPA has identified it as
24 a best available control technology, and suitable
25 for use.

1 COMMISSIONER PERNELL: But -- maybe I
2 can hear from Mr. Tooker on this.

3 MR. TOOKER: I don't have anymore detail
4 on that today than -- than Larry has already
5 mentioned.

6 COMMISSIONER PERNELL: What I'm leading
7 to is whether or not it's a proven technology for
8 the application of large power plants.

9 MR. ALLEN: Well, the manufacturer
10 certainly seems to think it is.

11 COMMISSIONER PERNELL: Well, naturally.

12 (Laughter.)

13 MR. ALLEN: But, you know, someone's got
14 to give it a chance. I mean, to the extent that
15 it can provide significant reductions above and
16 beyond what we get with SCR, and it's also, in my
17 mind, much more environmentally friendly, you're
18 not using ammonia out there. So I --

19 COMMISSIONER PERNELL: I'm not speaking
20 against it. I'm just trying to --

21 MR. ALLEN: No, I understand that. But
22 --

23 MR. TOOKER: I believe Mr. Nazemi has
24 some information to provide.

25 MR. NAZEMI: Yeah, I can quickly respond

1 to that. The answer to your question is there are
2 no existing 500 plus megawatt projects that use
3 SCONOX, but our district has evaluated SCONOX for
4 over two years, and we see no technical reason why
5 it can't be scaled up to that size. The issue
6 that has been brought up before us in one power
7 plant siting project that is proposing to use that
8 is the issue of high temperature SCONOX versus low
9 temperature.

10 As you know, in South Coast SCONOX has
11 been in use at a 30 megawatt project for over a
12 year, and in the State of Maine there has been a
13 project that uses a high temperature SCONOX at a
14 smaller size megawatt. And the issues that have
15 been raised with those two projects we don't
16 believe are technically strong to suggest that a
17 scale up is not doable.

18 PRESIDING MEMBER LAURIE: Okay. We're
19 going to take a break to 1:30.

20 I'm sorry.

21 MR. TOOKER: I was going to say EPA
22 might want -- they've also been part of that
23 evaluation, and might want to comment.

24 PRESIDING MEMBER LAURIE: Thank you.

25 MR. NGUYEN: I can comment later.

1 PRESIDING MEMBER LAURIE: Yeah. Well,
2 why don't you do that as soon as we come back.

3 Our thanks to the panelists. Thank you,
4 ladies and gentlemen, very much. And we'll see
5 you all back here in a half-hour, 1:30, otherwise
6 it's not fair to the rest of the folks, so -- we
7 can make it back by 1:30, we'll start at 1:30.

8 (Thereupon the luncheon recess
9 was taken.)

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1 AFTERNOON SESSION

2 PRESIDING MEMBER LAURIE: If you could
3 take your seats, members of the panel, we would
4 appreciate if you could come forth.

5 MR. TOOKER: Commissioner Laurie --

6 PRESIDING MEMBER LAURIE: Gentlemen, if
7 you could take your seats, please.

8 Mr. Tooker.

9 MR. TOOKER: Yes. This afternoon our
10 panel members are going to be talking about
11 Innovative Offset Sources and Solutions for Lack
12 of Offsets. And as we heard this morning, that
13 may be very district specific, and pollutant
14 specific.

15 First person I have up this afternoon is
16 Mohsen Nazemi, but he's not here at the moment, so
17 I will ask Mr. Steve Moore from San Diego Air
18 District to give his presentation, which I believe
19 is going to focus on MERCs.

20 Steve.

21 MS. TOWNSEND-SMITH: Chris, can I ask
22 you a quick question? Is the handout outside
23 different from Mohsen that was given this morning?
24 There's another handout on the table. Is it
25 different than what he presented this morning, the

1 hand out that's out there now?

2 MR. TOOKER: Who presented?

3 MS. TOWNSEND-SMITH: Mohsen. He just
4 walked in, too.

5 MR. TOOKER: Mohsen Nazemi?

6 MS. TOWNSEND-SMITH: Yes.

7 MR. TOOKER: I don't believe it's
8 different. It should be what he presented this
9 morning.

10 MS. TOWNSEND-SMITH: Okay.

11 MR. TOOKER: Well, here's Mohsen Nazemi.
12 The first person we have on the agenda this
13 afternoon is Mohsen Nazemi, to speak about area
14 sources as options for offsets.

15 MR. NAZEMI: Thank you. Good afternoon.

16 PRESIDING MEMBER LAURIE: My apologies
17 for the rushed lunch.

18 MR. NAZEMI: What lunch?

19 (Laughter.)

20 MR. NAZEMI: I'll -- I'm Mohsen Nazemi
21 with South Coast Air Quality Management District,
22 and in the benefit of time I'll be very brief on
23 my afternoon presentation. I don't have a formal
24 presentation for you, but I think it's important
25 to talk about a few issues as it relates to

1 alternative sources of offsets.

2 As far as the area source offsets are
3 concerned, the South Coast AQMD has been involved
4 in issuance of some emission reduction credit for
5 area sources. The particular project that we have
6 worked on was a project that at the time San Diego
7 Gas and Electric and Southern California Edison
8 were considering a merger. Part of the CEQA
9 process, they had offered as mitigations for CEQA
10 the conversion of a number of agricultural engines
11 into electric engines. And as a result the
12 emission reductions was to be utilized for
13 mitigating the CEQA impacts associated with the
14 merger.

15 Since the merger fell through, the
16 Southern California Edison approached the district
17 and requesting those emission reduction credits to
18 be banked as a form of ERC, and ultimately be
19 utilized for that reason.

20 Under district rules, emission reduction
21 from not permitted equipment are allowable,
22 provided there is the same five criteria, being
23 permanency, enforceability, quantifiability,
24 surplus, and others are met. And so ultimately,
25 after a number of years of discussion, we reached

1 a conclusion and issued those ERCs to Southern
2 California Edison. They were on an annual basis.
3 They were in the neighborhood of 75 tons per year,
4 and they were issued from -- for a ten year period
5 from 1993 through year 2003, and each year for
6 that amount. And recently, those credits were
7 converted actually into RTCs and introduced into
8 the RECLAIM market.

9 I think the issue that relates with the
10 area source and all other sources of credits, such
11 as mobile source credits, are that those are
12 allowable, or should be allowable if they're over
13 and beyond what the existing requirements in terms
14 of the regulatory requirements, have those
15 emissions be available for banking. And our --
16 our position is that if they're also accomplished
17 in a faster timeframe than the regulatory
18 requirements are in place, that they should also
19 be allowed to be used.

20 And in one sense, if you look at the
21 mobile source, for example, as -- as a comparison
22 to emission reduction credits, there are a number
23 of programs that state or federal government may
24 have in mind. I mean, we keep hearing about
25 alternative fuels vehicles, we keep hearing about

1 clean diesel and all that. The issue then becomes
2 are these types of conversions allowed for
3 emission reduction credits. And if you only look
4 at are they over and beyond the regulatory
5 requirements, probably the answer is no, because
6 ultimately somebody's going to do that.

7 But the question whether or not you can
8 accomplish them in a shorter and a faster
9 timeframe I think is worth considering, because if
10 somebody will do those conversions today instead
11 of ten years from now, it should -- equity
12 question comes up and whether there should be this
13 type of emission reductions historically has not
14 been allowed for stationary sources. But because
15 of the nature of mobile source, we just heard a
16 lot of testimony earlier that their life is
17 shorter than a stationary source project, and
18 therefore I think this would be an ideal type of a
19 situation.

20 The district has adopted a number of
21 rules so far that deals with mobile sources. We
22 call them our fleet rules, that deals with trash
23 trucks, transit buses, and so on and so forth.

24 And one other issue that I wanted to
25 bring up relevant to controls or retrofitting

1 existing power plants, for example, as a mean to
2 generate these credits, is that if you have a
3 program such as RECLAIM, I think that fits very
4 well into that type of a program, because you
5 generate credits that are being marketed towards
6 both existing and new or expansion of facilities.

7 When you're outside the RECLAIM type
8 market, then you're -- you're stuck with the issue
9 of are these credits going to be discounted, and
10 how much. Are they going to be discounted at the
11 time of issuance, or at the time of the use. And
12 when you look at all those, I'm not sure that
13 there's going to be a significant amount of
14 credits that can be used.

15 Now, I'm not saying that the power
16 plants should not control their emission. I think
17 that's -- that's a must. And our agency's
18 position has been that we are certainly
19 encouraging that and supporting that. But I think
20 that we need to be careful to say that if they put
21 on controls, there's going to be an abundance of
22 credits that are going to be generated, because
23 once you look at the other requirements within the
24 context of the rules, then there's not going to
25 leave a whole lot of credits for use.

1 That, in a nutshell, is what I was going
2 to talk about in terms of the area source credits.
3 Be happy to answer any questions you might have.

4 MR. TOOKER: I do have a question for
5 Mr. Nazemi.

6 Mohsen, with respect to installing
7 controls on existing facilities, could you briefly
8 mention some of the criteria that are used in
9 evaluating the amount of credits that are
10 provided, let's say, to a facility that has not
11 been used extensively in the past, although it may
12 be very large and it may be very dirty, does it
13 have or not have, in fact, a lot of credits
14 available.

15 MR. NAZEMI: Yeah, that's a very good
16 question, Chris. It's -- it goes back to the
17 element of real, when you -- under our rules, for
18 example, if you are looking at emission reduction
19 credits, what we have to do is look at the last
20 two years of operation of a source, and base the
21 credits on the actual operation.

22 So if you have a source that has not
23 been utilized very much for a couple of years, and
24 then they decide to put on controls or shut down
25 that source, the amount of credits that would be

1 available would be very limited. We also have a
2 requirement, as I mentioned earlier, that we would
3 discount it at the time of issuance to not RACT,
4 or reasonable achievable control measure, but
5 rather -- rather BACT levels. And one can argue
6 that technologies that are out there today are
7 generally BACT, and to accomplish emission
8 reductions of any significant amount you almost
9 have to shut down a plant or equipment to create
10 that, because once a BACT discount is in place
11 that would not leave you a significant amount of
12 reductions to use as a credit or offsets.

13 MR. TOOKER: One more question. You've
14 talked about using area source credits, such as ag
15 engines. What do you believe would need -- what
16 actions do you think would need to be taken either
17 by the district or by EPA to make those kinds of
18 sources acceptable for developing credits?

19 MR. NAZEMI: From South Coast's
20 perspective, we have both area source and mobile
21 source credit programs that have been submitted to
22 EPA for approval, and certainly would be one
23 action that could make those types of credits
24 available for broader use. And those would be --
25 I think the first step would be to get EPA to

1 approve the programs that are already adopted and
2 in the books.

3 The other -- the other part of it that I
4 think is important for the credit generators and
5 users to keep in mind is that until there is a
6 federal approval of this -- these types of
7 programs, that it doesn't matter how much the
8 local or state accomplishes, because it really
9 ultimately puts the end user at risk. And we have
10 seen that happen before. It would be either a
11 federal enforcement action or a citizen lawsuit
12 that ultimately result in the -- I guess the
13 payback of using the type of alternative emission
14 credits that was not ultimately federally
15 approved, even though at the local and state level
16 it went through the necessary steps to get them to
17 be approved.

18 We had a situation similar to that
19 relevant to use of mobile source emissions to
20 offset a stationary source by delaying
21 installation of controls, and even though our
22 board had adopted it, ultimately the company who
23 used that ended up being subject to federal
24 enforcement action.

25 MR. TOOKER: Thank you.

1 PRESIDING MEMBER LAURIE: Thank you, Mr.
2 Nazemi. And we deeply appreciate your time and
3 your district's time in making you available
4 today. And thank you very much.

5 Mr. Tooker.

6 MR. TOOKER: Yes. The next speaker we
7 have is Steve Moore, from San Diego, again, to
8 talk about the MERCs program.

9 Steve.

10 MR. MOORE: Thanks, Chris.

11 I'm going to discuss a MERC program that
12 we developed in San Diego County. I have to say
13 this was in conjunction with the Otay Mesa
14 Generating Project.

15 PRESIDING MEMBER LAURIE: Yeah. What
16 I'd ask you to do is to the extent that you can,
17 you'll speak generically.

18 MR. MOORE: I'll try to do that.

19 PRESIDING MEMBER LAURIE: The status of
20 Otay is a decision is pending.

21 MR. MOORE: I understand.

22 I guess we're not going to have any
23 visuals here. But as I mentioned this morning,
24 the Otay -- the project was a major source that
25 requires 120 tons of offsets. After sort of

1 extensive looking around for ERCs, they approached
2 us because they could only come up with about 50
3 tons of ERCs, to try and develop a MERC program.
4 And just quickly, looking at the issues involved,
5 we realized it would require a lot of close
6 cooperation between us and the Air Resources
7 Board, and EPA.

8 There are a lot of issues that are
9 raised in regards to mobile sources, whether it's
10 permanent, enforceable, quantifiable, real and
11 surplus. The programs that were suggested were
12 replacing heavy heavy duty vehicles in refuse
13 collection or trash trucks, and also repowering
14 marine vessels. And there was also a provision in
15 the program for replacing medium heavy duty
16 vehicles, diesel powered vehicles. But that -- no
17 one's actually exercised that yet. There are
18 applications in for the trash trucks and for
19 several marine vessels. And the replacement is
20 with natural gas-fired vehicles, either LNG or CNG
21 vehicles.

22 The issues that were sort of the
23 thorniest to resolve -- there were a lot of issues
24 involved -- were, one, making the credits good for
25 the life of the project. Our resources review

1 rule say that any credit that's used has to be
2 valid for the life of the project. As has been
3 mentioned several times, MERCs are generally
4 considered -- mobile emission reduction credits
5 are considered to have finite lifetimes.

6 Another issue was basically addressing
7 the possibility that those emissions could be
8 displaced. It can be an issue in other
9 situations, too, but by displace they mean if
10 someone repowers or replaces their vehicles with
11 ice cream vehicles and a competitor comes in with
12 dirty vehicles that are going to run cheaper, his
13 activities go down and we don't really get the
14 emission reductions that we thought we would.

15 And another issue was the local impacts,
16 whether there were going to be local impacts from
17 the plant that weren't going to be offset by the
18 MERCs.

19 We have a rule, Rule 27, that does allow
20 creation of mobile emission reduction credits.
21 However -- it should be -- should be available --
22 I do have a diskette, though, if you want to try
23 it.

24 (Pause.)

25 MR. MOORE: As I was saying, we do have

1 a rule, Rule 27, that allows the creation of
2 MERCs. But the programs that were explicitly in
3 the rule were not adequate for use as new source
4 review offsets.

5 But there was a provision in the rule
6 that allows the air pollution control officer to
7 approve alternative programs with the concurrence
8 of ARB. And that's the route we took.

9 We developed a program, like I said,
10 replacing heavy heavy duty vehicles and repowering
11 marine vessels. We narrowed the program to the
12 trucks and refuse collection because they're
13 captive weights around San Diego County. They're
14 not likely to go anywhere. And the marine vessels
15 are also ones that have applied -- anyway, are --
16 basically operate in San Diego and don't go
17 anywhere, have been in business for a long time,
18 which gave everyone a lot of comfort.

19 In addition, the lifetime for the trash
20 trucks is fairly long, 10 to 12 years -- 8 to 12
21 years, probably. And the marine vessels have a
22 very long lifetime. Most people think that their
23 lifetime is 30 years or more. And generally the
24 engines in those -- those vessels are rebuilt over
25 and over again and not replaced for the life of

1 the vessel.

2 We did put a requirement in the program
3 to require a minimum life for any vehicle or
4 vessel that came into the program just to prevent
5 someone from trying to scrap cars, or something
6 like that.

7 As I said, the marine vessels have a
8 lifetime of about 30 years. And both ARB and EPA
9 were willing to consider those credits be valid
10 for the life of the project. So if you were using
11 them to offset a power plant you didn't need to do
12 anything to those credits as far as the lifetime
13 went to make them useful.

14 However, the trucks have a short
15 lifetime, and the problem was to try and find a
16 way to extend the lifetime, if you will, so that
17 it would be valid for the life of the project.
18 EPA and the ARB both had different ideas how to do
19 that. They weren't mutually exclusive.

20 The EPA's idea is basically what they
21 call no backsliding, which means that once you
22 replace an engine in a marine vessel, or replace a
23 truck, any future replacements have to be as good
24 or better than the original replacement, as far as
25 emissions go. Or, they have to comply with any

1 rules that are in place at the time. So the
2 emissions are always going down, not up. If you
3 do that, EPA usually considers the life permanent.

4 The Air Resources Board had a different
5 concept, and their concept was front loading, and
6 by that they mean that if the project has a
7 nominal life of 30 years, the stationary source
8 project, you'd have to get 30 years' worth of
9 emission reductions within the lifetime of the
10 vehicle or vessel. And that was implemented in
11 the program by applying a discount factor to any
12 vehicle that had a lifetime less than 30 years.

13 Actually, discount factor for marine
14 vessel is one, so you have a discount factor but
15 it doesn't have the impact.

16 And by way of example, if you have a
17 vehicle that has a lifetime of ten years, and
18 you're trying to offset the emissions from a
19 project for 30 years, they would get discounted
20 the credits you issue for that vehicle. So they
21 have one ton per year of credit, it would get
22 discounted by a factor of three. So it's only
23 worth a third of a ton.

24 We kind of like that. It provides more
25 benefit up front. You get much larger emission

1 reductions than you would just straight up.

2 (Pause.)

3 MR. MOORE: Okay. Well, just roll them
4 through. I'm on extending credit life right now,
5 and hopefully you can catch up.

6 An example of a ten year life vehicle
7 for a 30 year project, you basically get three
8 times the emission reductions up front that you
9 would normally for the first ten years of the life
10 of the trucks. And the EPA requires those
11 emission reductions to stay in place forever,
12 essentially. That overstates the case a little
13 bit for the projects that we have in. The credits
14 are only going to be good for 20 years, so the
15 discount factor is not as great, and some of the
16 trucks have lives more than ten years. But you
17 still get a benefit of maybe one and a half to
18 one.

19 The displacement issue also involved a
20 lot of work and, once again, both the Air
21 Resources Board and EPA had different ideas how to
22 address it. EPA's idea is a minimum activity
23 level, which basically means that you're tracking
24 the fuel use or hours of operation or vehicle
25 miles traveled, or something like that, to be sure

1 that the mobile source is continuing to operate in
2 the same manner it did when -- as when the credits
3 were generated.

4 The Air Resources Board idea was -- was
5 similar, but not exactly the same. They want a
6 schedule of -- of when those mobile sources were
7 going to be replaced in the future and how long
8 they're going to be operating and that you have to
9 maintain that schedule within a -- a certain
10 amount.

11 That only applies, the ARB's activity
12 level or displacement tracking only applies to on
13 road vehicles. It doesn't apply to the marine
14 vessels.

15 As a result of this issue there's a lot
16 of record keeping that's generated. The mobile
17 source owner is responsible for keeping lots of
18 records about his operations, and then
19 transmitting those records to the user of the
20 credit. And the user of the credit has to keep
21 records of what the actual emission reduction is
22 being achieved by the mobile source. And they --
23 so the use the activity levels being reported by
24 the mobile source owner to calculate emission
25 reductions and also check to be sure that the same

1 number of vehicles are on the road that they said
2 there were going to be on the road.

3 In addition, the MERC user is on the
4 hook for any kind of deficit. If the activity
5 falls off, they have to do something to make it
6 up, either come up with more offsets, reduce their
7 operations, put on additional controls, something
8 to come up with more offsets.

9 PRESIDING MEMBER LAURIE: What happens
10 to those records, are they submitted somewhere?

11 MR. MOORE: They're submitted to us.
12 They're submitted -- they have to be submitted to
13 the mobile -- whoever's using the credit and us,
14 basically.

15 PRESIDING MEMBER LAURIE: So then does
16 somebody read them?

17 (Laughter.)

18 MR. MOORE: Well, I guess we'll see.
19 And we plan to read them, I'm sure.

20 The local impacts were addressed by
21 limiting the program. The program is limited to
22 providing offsets for new source review only. You
23 can't provide offsets to get out of a prohibitory
24 rule, something else you would have to comply
25 with. You can only get credits for NOx. You

1 can't get credits for PM10 or anything else
2 through the program, or VOCs, in particular.

3 And you cannot do any inter-pollutant
4 trading, so you cannot convert these NOx credits
5 into VOC credits. On the issue of VOCs, you know,
6 have various levels of toxicity, and so there's
7 some concern about trying to use mobile sources to
8 create credits, VOC credits.

9 There are some benefits, a lot of
10 benefits to the program, in summary. I think --
11 and these are real emission reductions. You get
12 immediate reductions in excess of what you
13 normally would get in the new source review
14 process. In addition, it reduces diesel
15 particulate as a side benefit of the program, and
16 as we all know, recently declared a carcinogen --
17 and it does provide needed offsets in San Diego.

18 We have applications for -- for 120
19 trash trucks in right now, conversion of trash
20 trucks and also I think eight or nine marine
21 vessels have applied under the program.

22 There are some drawbacks. It's limited
23 in scope, as I said, deliberately so. There's
24 extensive user record keeping involved, which is
25 different than most emission reduction credits.

1 Once you buy a credit, usually you don't have to
2 keep any records. Usually the user surrendered
3 the credit. It's whoever generates the credit
4 that has to keep records. But under this program,
5 the user of the credit has to keep records too,
6 and do some calculations on the actual emission
7 reductions.

8 And there is also potential liability
9 for the user, which is not theoretically
10 different, but sort of practically different, much
11 more explicit here than in the standard stationary
12 source emission reduction credit program.

13 In general, a stationary source emission
14 reduction credit, we have someone who gets a
15 permit to operate. The conditions to enforce the
16 credit are on that permit to operate, and then if
17 something goes wrong we go after them. We don't
18 go after the user of the credit. Theoretically,
19 we could invalidate the credit, but I -- I cannot
20 recall that ever happening. But in this case,
21 they're explicitly on the hook, basically, for the
22 actual emission reductions.

23 And, finally, it is costly. I mentioned
24 in the morning that the cost for ERCs were \$70,000
25 a ton. I don't precisely know what the cost of

1 the MERCs are, but my guess is they're in excess
2 of \$150,000 a ton. Part of the cost just comes
3 from the creation of the credit and the cost of
4 developing the program, which was considerable and
5 required a lot of work. The program is very
6 narrow in scope. Both ARB and EPA indicated that
7 any additional programs would not necessarily --
8 they'd have to be done on a case by case basis I
9 guess is what I'm trying to say. So we would have
10 to go through another program development in order
11 to try and get credits for some other source
12 that's not specifically identified in the program.

13 In addition, there is a clock ticking on
14 the emission reductions from the on road heavy
15 heavy duty vehicles. The settlement agreement
16 between ARB and EPA and the engine manufacturers
17 requires that emissions from new diesel vehicles
18 is dropped to two and a half grams per three
19 quarts per hour in October 1st, 2002.

20 Right now, the emission reductions are
21 being generated by using natural gas fired
22 vehicles that get about two grams per -- per hour.
23 New on road vehicles get 4.4 or even 5.4 under
24 some situations. So it's a difference in that
25 that's generating the reductions. When the

1 standards drop to two and a half, it'll be much
2 more difficult to generate significant amounts of
3 emission reductions under this program.

4 PRESIDING MEMBER LAURIE: Thank you,
5 sir. Good explanation of your program.

6 Question. And I'm going to be
7 interested in a response, if any, that other
8 panelists may have, as well.

9 If, for purposes of discussion, it's
10 determined that it is a good thing to place power
11 plants near the load requirement, where the
12 population centers are, use -- and assuming for a
13 moment that that is a public policy, legislative
14 or otherwise, but somebody made the determination
15 that because of a number of factors you really
16 want power plants near the load.

17 Do the rules and the mechanisms of
18 operation for the individual air districts promote
19 that policy, or are they a barrier to that policy.
20 That is, if you were to put up a map of where all
21 the people are, and my guess is in most areas of
22 California -- I could be wrong, but in most areas
23 of California where most of the people are is
24 where you have the greatest challenges from a
25 health -- air health perspective, so you impose

1 stricter standards in those areas. And as a
2 result of that, there's fewer credits available.
3 And as a result of that, power plants can't go
4 there, they have to go somewhere else.

5 Are we addressing conflicting policies,
6 or are the policies of air districts consistent or
7 potentially consistent with a public policy of
8 permitting new power at the load centers? Do I --
9 is that question intelligible at all?

10 Maybe I can try it again. We need to
11 put power plants where the people are, and is that
12 inconsistent with what you think your rules are.

13 MR. MOORE: Our rules mainly address
14 public health. That's -- that's the focus of our
15 rules. And, you know, a power plant is treated
16 like any other site that tries to locate in our
17 district. I mean, they have to go through a
18 health risk assessment, there's air quality
19 impacts for criteria pollutants, apply BACT, and I
20 would say in general that the rules are more
21 stringent in the more populated areas of the state
22 because those are the ones that have the air
23 pollution problems.

24 PRESIDING MEMBER LAURIE: What about
25 other land uses besides power plants. Let's say

1 on any other heavy manufacturer that's liable to
2 have significant air impacts. And let's assume
3 for purposes of discussion that whatever it is I'm
4 producing is a good thing, rather than a bad
5 thing. And, of course, it depends on everybody's
6 different perspectives.

7 If the standards are more restrictive in
8 heavily urbanized area, do those standards
9 directly or indirectly tell me, as a manufacturer,
10 to go somewhere external to those urban areas
11 where some land use planner might say we don't
12 want this stuff in Modesto, or Auburn, it should
13 go in the more heavily populated areas. Are there
14 conflicting public policy questions here?

15 MR. MOORE: I would say probably. I
16 mean, anyone that wants to locate anywhere in
17 California or the nation is going to consider all
18 sorts of things, like transportation costs,
19 availability of housing, availability of energy,
20 water, and probably what the air pollution
21 controls are, as well as other regulations that
22 might be in effect. Land use regulations, or
23 whatever.

24 You know, that's for them to sort out
25 and decide where the best place to locate their

1 operation is.

2 PRESIDING MEMBER LAURIE: But there may
3 be a -- a secondary question. They may decide
4 where the best place to locate is in order to get
5 their product to market, but if one aspect of
6 government regulations says no, you can't have it
7 there, forcing a certain use into other areas,
8 does that make public policy making more complex?
9 I'm not trying to put you in a corner. I'm really
10 trying to determine whether or not we have a
11 public policy issue here. And it's okay if the
12 answer is yes, and we -- we have to know that.

13 MR. MOORE: Yes.

14 (Laughter.)

15 PRESIDING MEMBER LAURIE: Thank you,
16 sir.

17 Commissioner Pernell, did you have any
18 questions?

19 COMMISSIONER PERNELL: Not at this time,
20 no.

21 PRESIDING MEMBER LAURIE: Thank you.

22 Thank you, Mr. Moore, very much.

23 Mr. Tooker.

24 MR. TOOKER: Yes. I do have one
25 question before we proceed, for Steven.

1 That is, based on your presentation, is
2 it correct to assume that providing credits in the
3 future through a MERCs program may be more costly
4 in -- in five years from now than they are today
5 for an existing facility that has a 30 year life
6 span?

7 MR. MOORE: I'd say that's an inference,
8 yes, you could draw. In general, not necessarily
9 across the board, but in general, yes.

10 MR. TOOKER: Because it's a dynamic
11 process where they need to continue to provide
12 those credits over time.

13 MR. MOORE: Well, the credits, once
14 they're issued under this program, are -- are
15 annual credit. It's not like they have to renew
16 them or have to purchase more credits each year.

17 PRESIDING MEMBER LAURIE: Mr. Moore,
18 you're not being picked up by the microphone.

19 MR. MOORE: I'm sorry. The credits are
20 -- are given as an annual rate. They're not
21 issued each year. It's not a program, you know,
22 there are some programs where each year you have
23 to go out and get additional credits. These
24 credits are good for the life of the project,
25 basically, at the rate of whatever they're issued

1 at, 100 tons per year, 120 tons per year. So they
2 don't have to, in that sense, go out and renew
3 them.

4 As far as, for example, the on road
5 vehicles go, I said the emission standards above
6 which things would be considered surplus are
7 dropping, which means it's harder to get a -- the
8 same emission reduction. Basically, you would
9 have to convert more trucks, probably by 2002,
10 maybe two or three times more trucks, which is
11 going to add to the cost of any credit that's
12 generated that way.

13 Marine vessels aren't so clear. I -- I
14 don't know of any proposed regulations for
15 existing marine vessels. There are regulations on
16 the new engines, but they do not apply to any
17 existing marine vessels.

18 So presumably, in three or four years
19 someone could -- could get -- replace a marine
20 vessel engine and get credits at not too much more
21 cost than it is today.

22 MR. TOOKER: Thank you.

23 If there are no other questions for Mr.
24 Moore, I'd like to offer Duong Nguyen, from EPA,
25 an opportunity to make any comments of a generic

1 nature he might want to make, with respect to
2 MERCs.

3 MR. NGUYEN: Right. Good afternoon.

4 I guess I'm slated to speak a few words
5 about MERCs from a federal point of view. Since I
6 don't have a formal presentation, I'll be brief.

7 I just want to emphasize that we
8 understand that there are many concerns and issues
9 regarding the use of MERCs, and as a result we are
10 having internal discussions to discuss the
11 viability of -- of these offsets. And also how to
12 deal with the concerns and -- and issues
13 associated with the use of these offsets.

14 The one power plant project where the
15 use of MERCs came up in Region 9 so far was the
16 project in San Diego, and Mr. Moore has done a
17 good job discussing it in some detail, so I'm not
18 going to go over it again. But I just want to --
19 to say that we agreed to let this project move
20 forward only on condition that the project contain
21 an array of conditions to ensure that -- that the
22 MERC -- the MERCs would meet all the federal
23 offset criteria for being surplus, enforceable,
24 permanent, et cetera. And that we made sure that
25 the project was a narrow -- the scope of the

1 project was narrow and restricted to San Diego
2 only.

3 MR. TOOKER: I have a follow-up question
4 of a generic nature.

5 Do you think that the -- the kind of
6 strategies developed by San Diego for --
7 consistent with their rules and for their program
8 would serve as the framework for a discussion by
9 EPA and ARB and the districts in California to
10 develop more consistent guidelines for MERCs to be
11 used on a broader basis?

12 MR. NGUYEN: Yes, I -- I thought that
13 the framework that was structured for the use of
14 MERCs in San Diego was a good one, and I would
15 expect that that framework might be used in, you
16 know, any future discussion, you know, at EPA, on
17 the use of these offsets.

18 MR. TOOKER: Thank you.

19 PRESIDING MEMBER LAURIE: Mr. Nguyen,
20 when the federal government adopts -- when your
21 agency adopts rules, do you consider land use
22 implications? And let me go back to my earlier
23 question. If your rules result in different
24 standards for different areas because of the
25 unique circumstances of those areas, do you have

1 an understanding that as a result of those
2 different rules certain land uses may end up in
3 one place as opposed to another place?

4 MR. NGUYEN: Well, let me just clarify
5 that EPA does not make rules to implement the
6 Clean Air Act. The districts do. Our job is to
7 approve them and do the SIP. And when we do that,
8 we -- I don't think we take into account land use
9 issues. We thought that -- that's best, you know,
10 left to the districts to make that kind of
11 decision.

12 PRESIDING MEMBER LAURIE: Mr. Nazemi, do
13 you care to comment on that question?

14 MR. NAZEMI: I think, Commissioner
15 Laurie, to answer your question you really have to
16 break it down into two questions. And one is, are
17 there different requirements for different air
18 basins within California or, for that reason,
19 nationwide. And the answer is yes, there are
20 areas that have more -- dirtier air, they have
21 tougher requirements because their job to reach
22 clean air under the federal mandate is more
23 difficult.

24 But then within those air basins, if
25 you're now looking at are there policies at the

1 local level or federal level that promote or
2 discourage building projects in the more populated
3 area versus a less populated area, I think my
4 first answer to that is that it's my belief that
5 our agency is not a land use agency, so we do not,
6 unfortunately, we do not -- or maybe fortunately,
7 we do not make the decision where that project
8 needs to be sited. Our job is to make sure that
9 the proposed project at the proposed site meets
10 the -- all the requirements associated with air
11 quality.

12 But I think, you know, simply stated,
13 the answer to your question is that given that
14 you're all in the same air basin, the requirements
15 associated with criteria pollutants are the same.
16 So it really boils down to is your project of a
17 nature that has a localized toxics impact that if
18 you're trying to site it in a populated area, the
19 rules that regulate new sources for toxics
20 emissions prohibit you from complying with the
21 rules, the answer is yes. Our rules does have
22 that element that prevents a company that -- or a
23 project that has a localized risk to be sited in
24 an area that's more populated than an area that's
25 less populated.

1 PRESIDING MEMBER LAURIE: Can you
2 restate that, your last sentence?

3 MR. NAZEMI: If you're siting a project
4 that has a significant risk, toxics risk, I think
5 local districts have a requirement, it's either in
6 the form of a rule or a policy, that's referred to
7 as new source review for toxic sources. And when
8 you look at those requirements, if you are siting
9 in an area where there is more population, in
10 other words, the nearest residence is only a
11 hundred meters away from your site, then you would
12 be subject to a tougher standard compared to when
13 the nearest resident is five miles away.

14 So to that extent, I think there is the
15 local district's rules have an element that
16 encourages siting in a non-populated area. But if
17 the project does not have a significant toxics
18 risk, then that does not become the predominant
19 issue relevant to where the project is being
20 sited.

21 PRESIDING MEMBER LAURIE: Let's assume,
22 for purposes of discussion, that a project has a
23 substantial risk. Are you at least willing to, as
24 an agency, acknowledge that your rules have a land
25 use impact, even though you don't consider its

1 jurisdiction, even though you don't consider land
2 use to be your jurisdiction. Do you have an
3 understanding that your decisions do have regional
4 or statewide land use impacts?

5 MR. NAZEMI: Commissioner Laurie, I
6 really prefer not to characterize it that way, but
7 I would like to characterize it is that our rules
8 have requirements that if a risk from a project,
9 based on the existing land use, turns out to be
10 greater than siting that project in an area that
11 based on its existing land use had a lower risk,
12 that our rules have that element in them.

13 PRESIDING MEMBER LAURIE: Thank you,
14 sir.

15 Were you done, Mr. Nguyen? Or did I
16 interrupt?

17 MR. NGUYEN: Yes, I'm -- I'm through.

18 PRESIDING MEMBER LAURIE: Thank you very
19 much.

20 Mr. Maul.

21 MR. MAUL: For those in the audience, my
22 name is David Maul. I'm the Assistant Division
23 Chief here in the division, and Mr. Tooker had to
24 leave to go brief somebody across the street, so I
25 will take up his place here and hopefully make

1 this seamless.

2 Mr. Nguyen, thank you much for your
3 presentation today. And our next speaker today is
4 Gordon Hester, from EPRI.

5 Mr. Hester.

6 PRESIDING MEMBER LAURIE: Mr. Hester,
7 first let me acknowledge, thoroughly appreciated
8 your article in the EPRI Journal. Very
9 informative. I would encourage all who have not
10 read Mr. Hester's article, which was what -- what
11 date --

12 MR. HESTER: I believe it was the summer
13 of last year -- or, no, it was the fall of last
14 year. Pardon me.

15 PRESIDING MEMBER LAURIE: A couple
16 issues ago. Thank you very much, Mr. Hester.

17 MR. HESTER: Thank you for that kind
18 remark about the article.

19 I've been studying emissions trading for
20 -- for so long that I can remember when offset --
21 when the use of offsets in the Los Angeles Basin
22 was considered the big success story of emissions
23 trading. Now, of course, the acid rain program is
24 typically cited as that success story. But I
25 think the use of offsets should still be

1 recognized as a very significant program with --
2 with substantial social benefits.

3 But I'm not really an expert on the
4 creation of offsets in California. And the topic
5 which I propose to briefly address today, which I
6 hope will be of interest to you, is that assuming
7 that the Energy Commission, or perhaps the Air
8 Resources Board, it's not clear to me from the
9 governor's executive order which would have a set
10 of essentially banks of emission reduction credits
11 that could be used as offsets for new power plants
12 in the various air districts, how should a program
13 to make those available to power plant developers
14 be designed.

15 So I will briefly touch on that subject,
16 and I'll keep my remarks brief, and perhaps if you
17 want me to expand on any of them I'd be happy to
18 respond to questions.

19 It seems to me that the primary
20 considerations for such a program design are the
21 objectives of the Energy Commission. The policy
22 options that are available to you and the
23 incentives that such a program would create for
24 power plant developers. With regard to your
25 objectives, it seems to me that the primary

1 objectives are -- are two. One is the expeditious
2 siting and development of needed electric
3 generating capacity, and the second is to avoid
4 compromising environmental quality objectives,
5 although those are primarily the responsibility of
6 other state and district agencies.

7 With regard to the objective of
8 developing needed generating capacity, the -- the
9 primary question I think is how do you determine
10 what capacity is most needed, taking into account
11 other than environmental considerations. And two
12 qualities occur to me as at least potentially
13 important ones.

14 One is the ability to deliver power
15 where need is anticipated. And there's been some
16 discussion today of whether it is desirable to
17 locate power generation in close proximity to load
18 centers, or perhaps to the transmission grid.
19 Another potential consideration would be the
20 access to the fuel sources on which the plants
21 rely, particularly major gas lines, considering
22 that new power plants today are -- fossil fired
23 plants, at any rate, are typically gas-fired
24 plants.

25 With regard to the -- to the issue of

1 proximity to load centers, I think the
2 considerations there, one is the line losses from
3 long distance transmission. But in the California
4 context, I think that's a very minor
5 consideration. It would certainly not amount to
6 more than a few percent of losses.

7 But the other is having generating
8 capacity closer to load centers reduces your
9 reliance on the transmission grid and on the
10 reliability of the grid, as well as the capacity
11 of the grid.

12 The second consideration seems to me to
13 be the question of the ability to deliver power
14 when it is needed. And it seems that the most
15 pressing need will be during summer peaking
16 periods. There may be seasonal constraints on gas
17 delivery, though I would think that those would be
18 least highest in the -- in the summertime, so it
19 probably would not be a consideration. And in
20 general, I would consider the question of when
21 delivery can be provided to be a lesser one than
22 where it can be provided.

23 As far as the objective of not
24 compromising environmental quality, I -- I had
25 intended to observe that if -- if qualifying

1 emission reduction credits for offsets, by which I
2 mean surplus, enforceable, et cetera, are obtained
3 in the ratios required by the air districts, given
4 that the air districts set those ratios with
5 consideration of an adequate margin of safety to
6 avoid compromising air quality, then really
7 environmental quality objectives should not be
8 compromised, and shouldn't have to be a big
9 consideration.

10 On the other hand, Mr. Tooker's comment
11 this morning that most projects do require
12 additional mitigation causes me to think twice
13 about that. Perhaps that is not true, although
14 I'm not aware specifically of the nature of the
15 mitigation to which he was referring.

16 Nonetheless, the CEC would probably want
17 to encourage development of power plants with
18 lower emission rates, both as a matter of good
19 public policy and also to avoid diminishing the
20 supply of offsets available both to support other
21 generating plants, and, as was alluded to in some
22 comments this morning, to support other economic
23 development opportunities. So obviously, the
24 lower emission rates are, the fewer offsets you
25 will have to use up, and the more offsets will be

1 available for other power plants or other
2 purposes.

3 PRESIDING MEMBER LAURIE: To what extent
4 are you familiar with CEQA?

5 MR. HESTER: Only passingly.

6 PRESIDING MEMBER LAURIE: Okay. I won't
7 ask the question.

8 MR. HESTER: Okay. Thank you.

9 As far as the policy options available
10 to you for achieving these objectives, I clearly
11 -- clearly, one of the options is simply whether
12 to make offsets available to -- for power plant
13 development or not. But that's a very blunt
14 instrument, and I think you would prefer a more
15 precise one.

16 It appears to me that the executive
17 order that the governor recently issued provides
18 some latitude for varying the price at which
19 offsets are available. And that might provide the
20 policy leverage, if you will, that you might
21 require. I'm referring to the language in the
22 executive order that says credit shall be provided
23 to facilities at up to the market rate for offsets
24 or emission reduction credits, and that where
25 power will be sold under contract to the

1 Department of Water Resources, that offsets may be
2 provided at up to a 50 percent discount relative
3 to the market rate.

4 So there appears to be some latitude
5 here to adjust the price of offsets as a means of
6 encouraging the development of facilities when and
7 where you deem them most valuable.

8 I think that these prices for offsets,
9 assuming that they can be varied, could be based
10 in part clearly on the market price in a given
11 district or region, and as we saw this morning,
12 those market prices can vary very widely. But you
13 could also base them on your determination of the
14 need for capacity in different areas and at
15 different time periods. And, finally, that they
16 could be based on emission rates. That is, that
17 there could be a different price set on offsets
18 provided to facilities depending on, for example,
19 the number of pounds of emissions per megawatt
20 hour that were produced by that facility, given
21 its fuel use, its emission controls, and the
22 generating technology, and so forth. And
23 obviously, the direction to go would be to set
24 lower prices for lower emission rates.

25 As far as considering the incentives for

1 power plant developers and operators that such
2 policies might create, obviously the price of
3 offsets itself would -- would be the primary
4 determinant of those incentives. Developers would
5 tend to go where offsets were available at a lower
6 price, just as they are today, where prices are
7 determined entirely by the market.

8 Another very important issue, though, I
9 think, and we've seen this throughout the history
10 of emission trading, is that certainty is really a
11 big issue for -- for a plant operator, preferably
12 certainty at a known price, but certainty that
13 offsets will -- will simply be available, period,
14 is going to be very important. And -- and the
15 best way to assure that certainty is to establish
16 clear rules as quickly as possible that would then
17 be applied uniformly.

18 PRESIDING MEMBER LAURIE: Let me ask you
19 a question about that. And you may not be able to
20 respond, but I'm interested also in the views of
21 others.

22 If -- if you have a limited number of
23 offsets available, and as a result it's first come
24 first served, regardless of what the use is,
25 whether it's a power plant or some kind of

1 manufacturing plant, or any other substantial
2 polluter. Should there be a rule which
3 prioritizes the use based upon other requirements,
4 based upon local land use requirements, based upon
5 state requirements. Should there be a priority
6 given to power plants over a tire manufacturer, or
7 a bicycle manufacturer. Because that is not
8 currently what is occurring. Do you have any
9 views on that?

10 MR. HESTER: Well, I think given the
11 governor's recent executive order, there -- there
12 evidently is a need to set a priority on the
13 development of power plants as a use of offsets.
14 It seems to me the governor has, in effect, for
15 the time being, at any rate, made that
16 determination.

17 And I think one could argue that the
18 provision of electricity is -- is so basic an
19 economic need that it should be accorded priority.
20 In that you -- and if you don't have the electric
21 generating capacity, you -- you need that to
22 support the other sort of uses to which you
23 referred, for a tire plant or whatever it may be.

24 PRESIDING MEMBER LAURIE: Okay. Mr.
25 Nazemi?

1 MR. NAZEMI: Commissioner Laurie, I
2 think the answer is yes, and there already exists
3 such a mechanism in local rules. I mentioned
4 earlier that rather than prioritize the
5 availability of offsets, what we have in our rule
6 is what we call an exemption, or what we refer to
7 as a priority reserve, where under public policy
8 we establish that certain projects, such as
9 essential public services, such as federally or
10 state mandated programs, reformulated gasoline,
11 and so on, do deserve to have the first cut.
12 That's basically bottom line, is they get a first
13 cut by being exempt from having to provide any
14 offsets. And --

15 PRESIDING MEMBER LAURIE: You don't
16 consider local general plans, or anything like
17 that, in developing those priorities.

18 MR. NAZEMI: That's correct. We don't
19 consider those. But there is some -- at least
20 some policy in place that provides some
21 prioritization on who should have the first cut at
22 the offsets.

23 PRESIDING MEMBER LAURIE: Very good.
24 Thank you, sir.

25 Sorry to interrupt, Mr. Hester.

1 MR. HESTER: Quite all right.

2 One other point about the incentives
3 created for developers and operators, and that is
4 that you obviously want to avoid creating an
5 incentive for plants to emit at higher rates than
6 they otherwise would. And insofar as you're using
7 adjustments in offset prices to provide incentives
8 to build needed capacity, you need to make sure
9 that you avoid setting that price below the
10 marginal cost of emission controls. And linking
11 the offset price to emission rates is one possible
12 mechanism for -- for accomplishing this.

13 And then a final point about this sort
14 of program, in general. It seems obvious to say
15 that you should keep these programs as simple as
16 possible. But I can assure you that you will be
17 urged by many parties to try and use these
18 programs not to achieve the central or primary
19 objectives of the programs, but also to achieve
20 other -- other objectives. For example, to make
21 up for perceived shortfalls in the -- in the
22 effectiveness of environmental programs.

23 The history of emission trading is
24 really rife with examples of how the perfect has
25 been made the enemy of the good, resulting in

1 programs with so many extra requirements and hoops
2 to jump through to make sure that no one takes
3 undue advantage or -- or nothing could possibly
4 happen to -- to make matters worse in one specific
5 location, that it has very frequently in the past
6 been the case that emission sources find it much
7 easier not to utilize these trading programs at
8 all, but rather to simply comply with conventional
9 requirements and be done with it. And that is a
10 situation that I urge you to avoid.

11 PRESIDING MEMBER LAURIE: Thank you,
12 sir.

13 Do you have any thought or comment on
14 the nexus between air emission standards,
15 California or elsewhere, and overall electric
16 supply capability?

17 MR. HESTER: I'm not certain that I
18 understand what you're getting at.

19 PRESIDING MEMBER LAURIE: How do air
20 emission standards impact the ability to provide
21 electric power?

22 MR. HESTER: Well, I certainly would not
23 go so far as to say that air emission standards
24 prevent us from being capable of supplying
25 electric power. But it is clear that they -- they

1 strongly influence the form in which capacity is
2 provided. I think that we're seeing, not just in
3 California, where this has probably been the case
4 for some time now, but -- but nationwide, that air
5 emission standards are -- are driving new capacity
6 to be pretty much exclusively gas-fired, except
7 insofar as biomass and wind resources are -- are
8 being developed, which is certainly positive
9 development.

10 But I think we need to be aware of where
11 I think we're seeing some of the effects of that
12 concentration on one fuel source for electric
13 generation being reflected in the gas markets
14 today. And that is certainly something that needs
15 to be anticipated, and while I would not go so far
16 as to say that it requires adjusting our
17 objectives for air quality, I think we need to be
18 careful about how we implement programs to achieve
19 those objectives and the schedule on which we --
20 we move toward them and consider them to be
21 feasible to achieve them.

22 PRESIDING MEMBER LAURIE: Thank you,
23 sir, very much.

24 COMMISSIONER PERNELL: I have a quick
25 question, and that is, you mentioned the fuel

1 source, and given at least what I know about fuel,
2 that natural gas is one of the cleaner fuels in
3 terms of these plants. Short of nuclear, do you
4 have any other suggestions as to a fuel source?

5 MR. HESTER: Well, I -- I mentioned wind
6 and biomass a moment ago. I think --

7 COMMISSIONER PERNELL: And air -- well,
8 not biomass, but wind is certainly geographically
9 restricted.

10 MR. HESTER: Geographically restricted,
11 and also restricted in its ability to provide
12 capacity when -- when needed. Obviously, you can
13 only run a wind plant when the wind is blowing.
14 And there are similar limits that apply to solar,
15 though I think it's some ways away from being
16 commercially viable on a large scale in any case.

17 But no, I don't really -- gas is clearly
18 the cleanest electric generating fuel by far, at
19 this point, and no, I don't have any alternatives
20 to recommend in the short term. I hope in the
21 longer term to see us develop much cleaner ways to
22 use coal, because it's a -- it's an abundant
23 resource. But I think in the short term, we're
24 going to -- our dependence on gas is -- can be
25 expected to continue.

1 COMMISSIONER PERNELL: And then, this
2 might be a little unfair to ask --

3 PRESIDING MEMBER LAURIE: That never
4 stopped you in the past, Commissioner Pernell. Go
5 ahead.

6 (Laughter.)

7 COMMISSIONER PERNELL: But if you had --
8 you've heard of San Diego's offset program, and if
9 you had an opportunity to design one yourself,
10 would it just be the air emissions versus whatever
11 pollutants, or would you look at a more holistic
12 process which, let's say, would include where the
13 plant's located, the demographics, and other
14 issues that have come before us as we're licensing
15 plants?

16 MR. HESTER: Uh-huh. I think this goes
17 back to the -- to the last remark I made about --
18 about keeping things simple and not letting the
19 perfect be the enemy of the best.

20 COMMISSIONER PERNELL: Well, that's why
21 I was a little reluctant to ask the question.

22 MR. HESTER: I think once you begin
23 folding a lot more objectives into a program, you
24 -- you really jeopardize its viability by -- by
25 just making it so complex that the people will

1 look for opportunities to avoid it, rather than to
2 take advantage of it.

3 COMMISSIONER PERNELL: Okay.

4 PRESIDING MEMBER LAURIE: If -- I'm
5 sorry, Commissioner Pernell, did you have anymore?

6 COMMISSIONER PERNELL: No. Well, let me
7 just ask the question for the rest of the panel,
8 in terms of fuel sources. Not renewable, but a
9 fuel source for -- for -- as a fuel for these --
10 for the plants, in terms of generation. Any
11 ideas?

12 MR. NAZEMI: Commissioner Pernell, we
13 have been recently approached by a company who
14 wanted to utilize ethanol as a fuel to generate
15 three and a half megawatt of energy. And I think
16 we certainly promote the use of ethanol over
17 diesel in any case that we can. But I think that
18 might be a viable solution if the NOx emissions
19 could be equated to natural gas. At this time I
20 think they're somewhat higher than natural gas.

21 MR. MOORE: I guess from San Diego's
22 point of view, definitely natural gas is our
23 preferred fuel at this point. There's nothing
24 that really comes close to it.

25 COMMISSIONER PERNELL: And that seems to

1 be the opinion of most of the generators.

2 MR. TALWAR: The only other thing I will
3 add, we make and manufacture bio-diesel. Bio-
4 diesel is -- sorry, it's a bio-diesel call.

5 (Laughter.)

6 MR. TALWAR: We make bio-diesel from the
7 melt down grease and what-not. Also, we make bio-
8 diesel from virgin vegetable oils. We have a
9 plant in Florida, and we are looking to put two
10 plants here in California, a plant in Arkansas and
11 a plant in Dallas.

12 So we should have plenty of capacity
13 available, hopefully by the middle of next year,
14 but it won't be enough to power 3,000, 4,000
15 megawatt. We may be having enough for maybe
16 seven, 800 megawatt in the end.

17 COMMISSIONER PERNELL: Now, the bio-
18 diesel is also made, a certain percentage is
19 ethanol? Is --

20 MR. TALWAR: No. Bio-diesel is
21 basically made from recycled cooking oil, and also
22 soybean oil. The conversion process can use
23 methanol as a chemical for chemical reaction, but
24 there is no ethanol involved in it otherwise, as a
25 raw material.

1 COMMISSIONER PERNELL: Okay. I'm
2 getting a little bit off the subject here, but in
3 terms of distributed generation, would that be an
4 application?

5 MR. TALWAR: Very much so. We --

6 COMMISSIONER PERNELL: Where you got
7 small -- smaller turbines or -- or diesel engines?

8 MR. TALWAR: Very much so. Bio-diesel
9 is -- has got no sulfur, no ash, behaves just like
10 natural gas. All the controls that are applicable
11 to natural gas are equally applicable to bio-
12 diesel. So it definitely will be a source for --
13 in those kinds of smaller power generating system.

14 COMMISSIONER PERNELL: Thank you.

15 PRESIDING MEMBER LAURIE: While we're on
16 the subject, and -- and I appreciate Commissioner
17 Pernell's question. If, again, for purposes of
18 discussion, as a matter of public policy assume
19 it's a bad idea to have a single source fuel,
20 reliability on a single source fuel. For purposes
21 of discussion. And assume again short to mid-
22 term, five to -- to ten years. In order to meet
23 California standards, how or where can technology
24 be improved to meet those standards with a fuel
25 other than gas? Is there any way for coal to meet

1 California standards, given what's expected to be
2 current coal technology over the next decade.

3 Anybody know?

4 No. Okay. Thank you, Mr. Hester.

5 Mr. Maul.

6 MR. MAUL: Mr. Hester, just ask you a
7 quick question before you -- given your long term
8 participation in the trading market and analyzing
9 this not only for California but elsewhere, that
10 could put you in a nice position to kind of look
11 to the future, particularly over the next three to
12 five years. Do you have any insights you want to
13 offer us to the viability of the offset trading
14 market or offset availability in general, not only
15 in the next six months, but looking out farther
16 two, three, five, ten years down the road?

17 MR. HESTER: Well, I -- really nothing
18 beyond the fact that I think that the discussion
19 that's being held this afternoon of innovative
20 ways to create offsets and possibilities such as
21 intersector trading between mobile and stationary
22 sources, I think will become increasingly
23 important. We've largely controlled stationary
24 sources in this country to such an extent, and
25 obviously that applies to California, as well,

1 even more so, if anything, that I think it's going
2 to be increasingly difficult to create credits for
3 use as offsets from mobile -- stationary sources.
4 And it will become necessary to look to other
5 source categories.

6 MR. MAUL: Thank you.

7 Mr. Hester, thank you much for your
8 presentation today.

9 Our next speaker is Mahesh Talwar, from
10 OceanAir. And Mahesh, I believe you have a power
11 point presentation you want to provide?

12 MR. TALWAR: Yes, I do. Let's see if
13 it's going to work today.

14 MR. MAUL: Okay. Check on our high tech
15 equipment here. Thank you very much for coming
16 today.

17 MR. TALWAR: Good afternoon. My name is
18 Mahesh Talwar. I am president of OceanAir
19 Environmental. As you heard me before, we also
20 own a bio-diesel manufacturing facility. Besides
21 that, we have been in the emission trading and
22 emission reduction credit creation business, as
23 well.

24 We started our business in emission
25 reduction credit creation business back in 1991.

1 That was started in Santa Barbara when I was
2 working there for a government agency. Santa
3 Barbara had seen the largest offshore oil
4 development, and just like you're seeing today the
5 largest power plant boom, Santa Barbara faced
6 similar kinds of problems. So they had to look at
7 ways to innovatively and creatively get emission
8 reduction credits.

9 That's when the whole concept we began
10 of doing the repowers on marine vessels, doing the
11 repowers on agriculture pumping engines. So we're
12 somewhat proud that we started the program in the
13 state. We were the first one to do that.
14 Initially went through pilot stages, then went
15 through a fully successful program. That was done
16 initially for CEQA mitigation.

17 Now, I want to make sure we understand,
18 the CEQA mitigation was this new source review
19 mitigation. New source review, we have to comply
20 with the requirement of real, surplus,
21 quantifiable, permanent, enforceable, and what-
22 not, which are really strict requirements in the
23 federal rule. There is not much leeway the local
24 air districts would have.

25 In CEQA mitigation, it's subject to

1 interpretation. Policy makers can choose whatever
2 way they want to implement. It's a very
3 discretionary process.

4 Give an example. You may have a 6,000
5 homes tract here. You think the provide offsets
6 for all the emissions they are causing from
7 construction of those homes, or activity of
8 people, some driving cars. No. What they do in
9 CEQA analysis of those kinds of construction
10 projects is look at the ways to minimize the air
11 pollution impact from technological ways going in.
12 There are no offsets requirements or mitigation
13 requirements beyond that.

14 Now, the project remains somewhat, you
15 know, the findings may be -- you will end up with
16 a staff recommendation that the policy makers have
17 to have an overriding concern, per se, and still
18 approve the project, per se.

19 Having said that, CEQA therefore
20 provides a lot of latitude and flexibility and
21 very innovative ways you can either choose not to
22 do it, or if you do it, you have a lot of
23 flexibilities, but I wanted to convey this
24 message.

25 Next, let me begin by saying that we

1 have been on the other wise as far as creating
2 these, and we are seeing the real life situations,
3 problems, and found solutions. It's easier to
4 talk sitting here that you may have heard from
5 various speakers here is the programs out there
6 where you can create mobile source emission
7 credits, or innovative ways you can create
8 emission reduction credits. But in practical
9 life, it is very, very tough.

10 You heard from San Diego, my friend
11 here, Steven Moore, I was the first one to
12 approach him back about -- what is it, Steven, two
13 and a half years ago?

14 MR. MOORE: At least, yeah.

15 MR. TALWAR: Two and a half years ago we
16 went to him and said, okay, we want to do a marine
17 vessel in San Diego for a potential power plant,
18 which was not even built at that point in time.
19 And to their credit, they were very supportive of
20 our concept, but it took two and a half years,
21 various trips to agency, a lot of money. And to
22 CARB and EPA. But I'm glad to see that program
23 come to fruition today.

24 The basic message is it does take time
25 and money. Don't expect magic solutions within

1 six months. The regulatory barriers are
2 tremendous. New concepts, everybody still has to
3 review those and it takes time. So keep that in
4 mind when you are looking at new and innovative
5 solutions.

6 Next, we have competition. The
7 government is trying to approach the same sort of
8 unpermitted sources which we are discussing here.
9 Ag pumping engines, marine vessels, on road
10 trucks, buses. Government has got more money than
11 private sources, believe me. Government has put
12 in under Carl Moyer program close to about -- I --
13 my numbers are correct -- 70, \$80 million in Carl
14 Moyer program.

15 Then there is an AB 2766 program, which
16 has got about 70, \$80 million. Then there are a
17 couple other. Sacramento's got some special
18 provisions. They got \$50 million plus.

19 Where does all this money go? None of
20 this money ever goes to cleaning up stationary
21 sources. It goes to -- it goes as a government
22 incentive grants for cleaning up unpermitted
23 sources. So private industry is going to face
24 tremendous amount of competition from free
25 government handouts. If I am operating a fleet of

1 trucks and I get government grant, which has got
2 almost no strings attached, and now I can operate
3 fleet of natural gas buses, and then, on the other
4 hand, the private industry power plant comes in
5 trying to do the same thing, they have a
6 tremendous record keeping requirement, you know
7 which path I am going to choose.

8 So there are some competing forces,
9 private forces, government, that's out there. So
10 let's keep that in mind, as well.

11 You have to do that manually there.

12 The next one.

13 Now, under the new source review rule,
14 that's when I talked about the traditional source
15 of offsets. Most of the time you end up requiring
16 offsets for NOx, PM10, and VOC. NOx and VOC,
17 generally speaking, we start -- when you started
18 four years ago, the banks are rich. San Joaquin
19 had the biggest bank in the world, for example.
20 And I know of one power plant company that located
21 in San Joaquin with the intention they wanted to
22 bring power into South Coast, or Los Angeles
23 Basin, because the offsets were there. So there
24 had been some discussion, yes, there had been
25 company that -- at least they have told me the

1 reason they are located in the region is because
2 the offsets were available.

3 But today, what we are looking at, the
4 banks are pretty much gone. Gone by -- by the
5 fact that most have been grabbed up and taken up
6 by power plants. When the banks are gone, then
7 what do you do? And that's when we start looking
8 at the innovative -- innovative solutions to all
9 these -- all these situations.

10 Innovative solutions, when you talk
11 about, let's look at some CEQA side -- side of it,
12 too. I think there was some discussion earlier
13 this morning about CEQA mitigation, and there was
14 an example given for San Diego where the power
15 plant company there has proposed to pay into a
16 Carl Moyer fund at the air quality management
17 district. That fund, the district is going to use
18 to augment their existing fund they get from the
19 state. Therefore, they did not have to go and
20 obtain PM10 offsets, which were not required by
21 the local air district, but they were required
22 under CEQA mitigation.

23 So those kinds of things are going to be
24 very, very helpful. We have also spend
25 considerable time in looking at the agriculture

1 pumping engine, for example. Situation we faced
2 here, they are unpermitted sources. Each and
3 every air district has got different sets of
4 requirement how to deal with unpermitted sources.
5 Some districts have this thing in the rules that
6 they will allow offsets to be created from
7 unpermitted sources for NSS, new source review or
8 stationary source use. Some districts don't, and
9 they have to go back and modify their rules, and
10 modification of rule can take maybe a year or two
11 year or longer process.

12 The changes to the San Joaquin new
13 source review rule that have been going on for two
14 and a half years, still not done, which will allow
15 the use of so-called fourth quarter PM10 from
16 cotton gins to be used across all quarters. Now,
17 that is good for power plants, because they need
18 PM10, and PM10 are plentiful in the fourth quarter
19 from cotton gins.

20 But the regulatory process itself is a
21 very long and tedious process to get changes
22 approved within the existing framework of the
23 rules.

24 So basically -- let me just sum it up.
25 In terms of recommendations, where we think we can

1 have a good nexus between what you are all trying
2 to achieve and still not degrade the air quality,
3 I got couple of recommendations in that.

4 One, I understand that there may be
5 situations because of public pressure, you know,
6 public may want to see some mitigation for so-
7 called unmitigated impacts from -- under CEQA.
8 Under those kinds of scenarios, we strongly
9 recommend to look at not only -- to not
10 necessarily look at -- let's say, give an example,
11 PM10, for PM10.

12 Look for broader scope, like doing some
13 -- encouraging repower with alternative fuel.
14 Garbage truck fleet, for example, which have got
15 diesel toxic reductions. So something more global
16 that can be achieved under CEQA, or pay into
17 existing air quality fund which is already
18 established, managed very well by the air
19 districts. So that's -- that's one angle
20 definitely to be looked at.

21 The second thing, we strongly support
22 the new bill that's being discussed where all the
23 government money that's available, which now is
24 creating competing interest against the power
25 plants and offsets availability, there has to be

1 some sort of a nexus where emission reduction
2 credits from various projects can be put into some
3 sort of a bank to be used exclusively for power
4 plants development, so we don't end up competing
5 for the same resources and pool.

6 Lastly, I would say that there has to be
7 some sort of a encouragement or incentive, or
8 whatever way you can create that incentive, for
9 the use of renewable fuel, like bio-diesel,
10 ethanol, or something else to create an
11 alternative to natural gas. In Europe they are
12 looking at putting in close to about 40,000
13 megawatts using bio-diesel produced from soybean
14 oil. This country produces enough soybean oil to
15 power at least 80,000 megawatts, if all the
16 soybean oil was indeed used, but there has been no
17 market for it, and therefore there has been no
18 encouragement.

19 Technology exists today, given the
20 proper policy push, and the plants can be
21 installed within the next I would say two to three
22 years timeframe.

23 Thank you.

24 PRESIDING MEMBER LAURIE: Thank you, Mr.
25 Talwar. Thank you, sir, very much.

1 Mr. Maul.

2 MR. MAUL: Just a quick question for
3 you, Mr. Talwar.

4 You had mentioned that the regulatory
5 process for new kind of rules like this is
6 somewhat difficult. Can you offer some
7 suggestions on how to make the regulatory process
8 more efficient or effective in considering things
9 that it doesn't normally consider, innovative
10 approaches, new rules, new fuels, new
11 technologies?

12 MR. TALWAR: I think my only suggestion,
13 being an ex-regulator myself, is to kind of get an
14 early consensus with all the stakeholders in the
15 same room, rather than trying to pass the rule,
16 then send it to EPA, CARB, for their review, and,
17 you know, get everybody on board and get a time
18 consensus.

19 The other suggestion I had was to do it
20 through the legislative process and put a
21 timeframe to it.

22 MR. MAUL: All right. Thank you much
23 for you presentation.

24 Our next speaker here is Ken Lim from
25 the Bay Area Air Quality Management District, and

1 Ken has a few insights he'd like to offer on
2 offset availability in the Bay Area.

3 PRESIDING MEMBER LAURIE: Afternoon, Mr.
4 Lim. Some of our other speakers have been before.
5 We're going to ask you to get very close to the
6 microphone, otherwise you won't be picked up.

7 MR. LIM: Thank you, Commissioner.

8 My name is Kenneth Lim. I'm with the
9 Bay Area Air Quality Management District. I was a
10 last minute addition to the panel here, so I
11 didn't come --

12 PRESIDING MEMBER LAURIE: We're happy to
13 have you.

14 MR. LIM: -- I didn't come prepared with
15 remarks in advance. I just came actually from
16 another ongoing meeting at the Air Resources
17 Board, and so I don't have the luxury of knowing
18 what was stated earlier.

19 But I'll just add a few comments, and --

20 COMMISSIONER PERNELL: Just a second.

21 (Inaudible asides.)

22 MR. LIM: Okay. I just had a few
23 comments based on the few minutes I've heard, and
24 I'm sure my colleagues in the other air districts
25 have already made similar comments.

1 The Bay Area itself, as far as
2 availability of offsets for power plants, or
3 whatever new facility, on the books, so to speak,
4 quite a few, I believe more than adequate for
5 nitrogen oxide, which is the primary pollutant
6 ozone precursor from power plants, as well as VOC
7 emissions credits availability.

8 The question, though, is, I think,
9 availability as far as price. We have seen,
10 because of the demand and new plants, including
11 power plants, the price being bid up. In recent
12 years NOx credits were in the range of six to
13 \$10,000 per ton. And recent sales figures
14 indicate as high as over \$20,000 per ton. So when
15 there are remarks heard that there's a shortage of
16 offsets, I think it might be qualified as a
17 shortage of offsets at the desired price.

18 On the other pollutants, PM --

19 COMMISSIONER PERNELL: On that -- I'm
20 sorry. Is there -- and you represent the San
21 Francisco Air Quality District?

22 MR. LIM: That's correct.

23 COMMISSIONER PERNELL: And -- and is it
24 your assertion that there's no shortage of offsets
25 there, it's just a matter of price?

1 MR. LIM: That's -- that's not -- the
2 price is obviously not a small matter, but
3 currently in our bank we have something on the
4 order of over 2500 tons of NOx emissions, and a
5 typical large central power plant, say in the 500
6 megawatt range, well controlled, meeting the
7 standards, would require only about a hundred
8 tons. And we have about 2500 tons or more in --
9 in the bank.

10 But getting the holders of these credits
11 to sell is another matter. Everything has a
12 price, and unfortunately the price has gone up
13 considerably.

14 On the other hand, PM10 emission, there,
15 there's not an abundance of credits, and I -- I
16 believe it's the same situation in other air
17 districts.

18 As far as our rules in our district,
19 however, most of these plants would not trigger
20 the PM10 offset requirement, so that in general
21 would not be an impediment. However, as discussed
22 I think earlier, there might be specific cases of
23 concern on the CEQA, where a specific location or
24 a specific facility may need some mitigation
25 measures as far as PM10 offsets.

1 PRESIDING MEMBER LAURIE: Do you concur
2 that we don't know, in any given district, what a
3 reasonable -- what an acceptable price, or what a
4 desirable price might be. That is, we heard the
5 representative from Calpine this morning, and what
6 he said, which I -- I think is natural when a
7 developer goes in and they have a choice of where
8 in the state, if at all, they're going to seek to
9 site a power plant, they'll put up a matrix. And
10 the matrix will have air and water and local
11 issues, and this and that and this and that.
12 Price and availability of offsets will be one of
13 those factors.

14 Given the fact that a merchant plant is
15 not required to locate in any given area, would it
16 be correct to say that even though on the books
17 there may be an appearance of availability, if the
18 price is sufficiently non-desirable it is the
19 equivalent of being non-available because a
20 developer will go elsewhere.

21 MR. LIM: Certainly the price, if it's
22 sufficiently high, would be an impediment, and
23 perhaps a severe impediment to choosing that
24 location. But I think the overall demand, and
25 even the price that electricity can demand has

1 changed markedly in recent years and recent
2 months, or days, even, perhaps. So such that on -
3 - relative to the price of electricity,
4 particularly for a merchant plant that may be able
5 to sell at a rather commanding price, the price of
6 the offsets itself may be an overall very small
7 fraction of the entire cost.

8 PRESIDING MEMBER LAURIE: I don't know
9 what that answer is.

10 MR. LIM: And I think I would -- without
11 knowing the details right now, I would venture
12 that the price of offsets themselves can be made up
13 very quickly, in a matter of perhaps months in the
14 lifetime of a plant. So I don't think that is the
15 single impediment that is a general case.

16 However, I'm a firm believer in the free
17 market system, where there is true flexibility and
18 true availability, so that they can choose an
19 alternative site where the availability would be
20 more attractive.

21 I was going to continue on that there
22 might be a silver lining in the cost of the rise
23 in offsets, not that we're encouraging the
24 shortage, but there could be other facts or silver
25 linings.

1 For example, if the price is
2 sufficiently high for offsets, that would actually
3 encourage companies to pursue the creation of new
4 offsets in an open market system, where before,
5 when there was \$5,000 per ton, there wasn't that
6 incentive. The emission reduction has to be real,
7 they might be quantifiable, the local bureaucratic
8 air agency may require permit conditions, record
9 keeping, all kinds of reasons why a company would
10 not want to voluntarily reduce emissions in
11 exchange for credits.

12 But given that that price has gone up
13 two times, three times, four times, they may be
14 willing to pursue alternatives or other -- perhaps
15 even advanced technologies for reducing emissions
16 beyond regulatory requirements.

17 That's one silver lining.

18 Another silver lining may be that the
19 new plants that are in the process of applying for
20 a permit would be encouraged to apply the latest
21 control technology. In other words, advancing the
22 technological frontiers of the best available
23 control technology, because knowing that, if they
24 voluntarily take lower emissions, the result is
25 they're lowering net emissions from that plant and

1 therefore they would actually require less
2 offsets.

3 In other words, given the price of
4 offsets is the highest barrier, then they will
5 reduce emissions. And historically, that's what
6 we've found. Over the last ten years, these power
7 plant proposals that come in our door, year by
8 year, almost every other year, they voluntarily
9 come down. In fact, many of our BACTT
10 determinations, B-A-C-T-T, contrary to public
11 perception, was not the air district cracking
12 down. Last year, you -- your counterpart came in
13 with a power plant proposal of ten ppm, this year
14 the air district was -- we rarely do that in the
15 case of combustion systems. But typical power
16 plants, or even smaller scale, even in smaller
17 industrial boilers, it's the technology. They
18 voluntarily come in, often for the purpose of
19 avoiding offsets, or minimizing the offsets that
20 it provides.

21 So that, say ten years ago, emission
22 levels were in the 20, 30 ppm level. And now,
23 we're talking about two and a half ppm. And I
24 would wager that it wasn't because the air
25 districts were pushing it. It really was the

1 offsets driving it. And I think that's a
2 forgotten point.

3 Many of the air district, including us,
4 we have attempted to help out small facilities,
5 including small generation sources, in obtaining
6 these offsets, recognizing that their own
7 resources may not be as robust. And we have
8 what's called a small facilities bank that we've
9 created. These are available for emissions of
10 VOCs, organic compounds, and nitrogen oxides, for
11 facilities that have the potential to emit of less
12 than 50 tons per year. We've had this offset bank
13 for six or seven years, I think rather
14 successfully.

15 Unfortunately, with the expansion in the
16 economy, especially obviously in the Bay Area, new
17 facilities come in, they have tended to drain the
18 available credits from these offsets. So now that
19 some of these smaller peaker plants come in, we're
20 about to tell them that what was available a year
21 ago, two years, three years ago, is nearly drying
22 the well. So that is of serious concern to us,
23 because on the short term these peaker powers may
24 help us through the coming summer, and we're
25 working with them to see what ways we can do that.

1 But we're also encourage by the fact
2 that we're getting a lot more inquiries from
3 consultants, and even private companies that --
4 asking how do they generate credits, in a -- at
5 this point, in a conceptual discussion. But these
6 are frequent conversations, and these are
7 conversations we didn't have even six months ago
8 or a year ago. So that is encouraging.

9 PRESIDING MEMBER LAURIE: Thank you very
10 much.

11 Ms. Townsend-Smith.

12 MS. TOWNSEND-SMITH: I'm curious, now.
13 I like your analogy of using a silver lining. But
14 I'm curious if South Coast Air Quality Management
15 District has experienced some of the same things
16 you've experienced, in terms of facilities
17 actually coming in and reducing their air
18 emissions also. You said that's a trend now in
19 the Bay Area?

20 MR. LIM: I want to clarify that. They
21 have not actually done this, but they are in the
22 conceptual stage of talking to us, asking how it
23 can be done, and they are going back to their own
24 management, see if that's a viable path that they
25 want to pursue. They haven't formally requested

1 such a path, but the discussions are there.

2 MR. NAZEMI: I guess I can address that
3 in two ways. One is are the new facilities coming
4 in at lower and lower levels, and the answer is
5 yes. And maybe a good comparison between Bay Area
6 and South Coast is Ken just mentioned the small
7 source offset bank is at 50 tons. Our small
8 source offset bank is four tons, and that's
9 because of the -- the extreme non-attainment area
10 we're in.

11 But as far as existing sources that want
12 to reduce their emissions, I think that begs the
13 question again to talk about these acronyms that I
14 hate to throw out again, but RACT and BACT
15 discounts. When a facility tries to control their
16 emissions, if they have to discount it by RACT or
17 by BACT, that's retrofit control levels or new
18 control levels, that really doesn't leave a whole
19 lot for emission reductions once they discount it
20 to that level.

21 And so I guess that's -- that's one
22 issue that we all need to, as regulatory agencies,
23 deal with and come up with the best answers.

24 MS. TOWNSEND-SMITH: Thank you.

25 COMMISSIONER PERNELL: Where is the cut-

1 off line with a small source offset versus just
2 offsets? So you have a -- you stated that you
3 have a bank of offsets that is high, and the price
4 is -- well, the number is high, and the price is
5 high. And then you mentioned a smaller offset
6 bank that don't have as many offset opportunities
7 in.

8 MR. LIM: The small -- the small
9 facility bank that I was referring to is a bank
10 created and financed by the district itself. And
11 its purpose is to help small facilities get the
12 same necessary offset credits that other
13 facilities get, but only small facilities are
14 eligible for.

15 COMMISSIONER PERNELL: And what is the
16 definition of a small facility?

17 MR. LIM: Currently, our definition
18 refers to small facilities that emit -- have the
19 potential to emit less than five-zero, 50 tons per
20 year. And the -- the offset trigger in our
21 district is 15 tons per year. So we have
22 endeavored to help small facilities that emit
23 between 15 and 50. That offset trigger of 15 tons
24 depends on the severity of the air quality problem
25 in the air basin. So we are moderate. And a more

1 serious basin, like the South Coast District,
2 would have a lower offset threshold because the
3 emissions problem is more severe.

4 COMMISSIONER PERNELL: Right. And I
5 thought I heard you say four tons.

6 MR. NAZEMI: Right. Under our program,
7 under the state law we have to -- or every source
8 has to basically show no net emission increase,
9 but the South Coast District has provided an
10 exemption where we, in turn, provide those offsets
11 for the sources that are less than four tons per
12 year.

13 PRESIDING MEMBER LAURIE: Thank you, Mr.
14 Lim, very much.

15 Mr. Maul.

16 MR. MAUL: Thank you very much.

17 As you know, Mr. Mike Tollstrup from the
18 Air Resources Board was not able to be here this
19 morning, but we're fortunate that George Poppic is
20 able to participate this afternoon at very short
21 notice, and I understand that he may be willing to
22 come up here to the podium and provide a few brief
23 comments on ARB's role in looking at offset and
24 MERC policy developments.

25 So, Mr. Poppic.

1 PRESIDING MEMBER LAURIE: More than
2 happy to have you, sir.

3 MR. POPPIC: Can I have that topic
4 again, please?

5 (Laughter.)

6 MR. MAUL: Obviously this is a last
7 minute stand-up here, but can you provide some
8 comments to us about ARB's role in looking at
9 offset availability and working with the
10 districts?

11 MR. POPPIC: Sure.

12 PRESIDING MEMBER LAURIE: All during
13 this morning's presentation, everybody determined
14 that most of the questions were CARB questions, so
15 we're looking forward to your few minutes.

16 MR. POPPIC: Well, thank you.

17 My name is George Poppic. I'm with the
18 Office of Legal Affairs for Air Resources Board.

19 PRESIDING MEMBER LAURIE: Can you check
20 and see if his microphone is on, please.

21 COMMISSIONER PERNELL: You might have to
22 get a little closer.

23 MR. POPPIC: It's on.

24 As you know, the governor last week
25 issued several executive orders, one which

1 pertained to -- directly to the Air Resources
2 Board and, among other things, required it to
3 create an emissions offset bank to help facilitate
4 the permitting of -- of peaking and other power
5 producing facilities.

6 We are, of course, now in the process of
7 trying to understand what it is we are supposed to
8 be doing under that executive order, as well as
9 trying to identify as many sources as possible,
10 emission reduction sources that we can find.
11 Certainly issues have been brought up here. The
12 Carl Moyer program offsets over the last couple of
13 years is certainly an idea. But we are currently
14 working with CEC and trying to develop just what
15 can go into that bank.

16 PRESIDING MEMBER LAURIE: Now, that only
17 applies to peaker plants; right?

18 MR. POPPIC: Correct.

19 We are also working with the CEC with
20 respect to some of the issues under the executive
21 orders that were issued them, D26, 25 and 26, in
22 terms of expediting the retrofitting -- or, I
23 shouldn't say retrofitting -- of increasing power
24 of existing facilities as well as permitting new
25 facilities to increase current power levels.

1 Again, those are issues that we are grappling
2 with, the same as -- as your staff. And we are
3 working as diligently as possible to determine
4 what it is that we can do under these
5 circumstances.

6 I wish I could be more specific, but
7 frankly, we are in the throes of trying to figure
8 out, much as you are, what we need to do and where
9 we need to go.

10 PRESIDING MEMBER LAURIE: Thank you,
11 sir.

12 Question for you. I'm sorry, did you
13 have anything further?

14 MR. POPPIC: No.

15 PRESIDING MEMBER LAURIE: This morning
16 and earlier, we talked about public policy. And I
17 think we noted that the enforcement, or the
18 implementation of individual district rules, which
19 based upon the different basins may have different
20 standards among them statewide, could result in
21 not only generally speaking land use implications,
22 but implications for where power plants might go.

23 And the question posed was, for purposes
24 of discussion, if it is determined that it is a
25 good thing that power plants go where the demand

1 is, where the load requirement is, and yet if --
2 if that indicates that in the greater urbanized
3 areas where these standards are the most
4 restrictive, it creates a barrier, or an inhibitor
5 to power plants, does that create a conflicting
6 public policy. That is, if on the one hand you
7 say yeah, we think it's a good idea to have power
8 go to where the load is, but the way the rules are
9 it provides disincentives to locate heavy
10 polluters in the urbanized area where the load is.

11 If those are proper assumptions, maybe
12 they are, maybe they are not, is that an issue
13 that the State of California, through your agency,
14 examines? Is that the kind of public policy
15 question that you folks have jurisdiction to deal
16 with, do you think?

17 MR. POPPIC: Fortunately, the Air
18 Resources Board pretty much is limited to air --
19 air quality issues. Certainly any activity that
20 causes a physical impact on the environment will
21 necessitate permits from more than one agency.
22 Certainly land use permits, as far as -- as power
23 plant siting goes, is an essential component of
24 getting power plants sited. One of the reasons
25 why this Commission is here is with respect to

1 power plants over 50 megawatts is to reduce that
2 local political effect on siting of power plants.

3 But as far as Air Resources Board is
4 concerned, the -- the land use aspects of siting
5 are severable from the air quality issues, and --
6 and we do not get into the land use aspects of
7 thermal power plant sitings at all.

8 PRESIDING MEMBER LAURIE: Mr. Maul, do
9 we have, in response to that answer, is that an
10 Energy Commission question? If the Energy
11 Commission said good public policy says plants go
12 where the load is, proper health policy, air
13 emission policy says where the load is where the
14 people are have to have stricter standards, which
15 could discourage plants. Where does Energy
16 Commission jurisdiction come in?

17 MR. MAUL: Well, in my humble opinion,
18 if you look at the history of the Energy
19 Commission, the Commission has taken on these
20 kinds of issues, primarily because the law that
21 established the Commission is unlike the law that
22 establishes most other state agencies. Most state
23 agencies are single purpose agencies, whereas the
24 Energy Commission tends to be a multi-purpose
25 agency looking at not only energy, but

1 environmental quality and other issues dealing
2 with the general health and welfare of our
3 society.

4 So we already have inherent in our
5 direction and the scope that encompasses our
6 Commission the ability to look at a number of
7 factors and balance those factors, when to
8 consider an energy policy. We've taken those --
9 this kind of a strategy for many, many years here
10 at the Commission, with efforts, joint efforts
11 between ourselves, Air Resources Board, Caltrans,
12 and others, looking at the nexus between not only
13 air quality and energy, but land use, as well, and
14 transportation. Those four components together
15 tend to be very closely linked in trying to figure
16 out how you deal with societal issues on
17 infrastructure, power plants, land use, freeways,
18 and air quality impacts.

19 So the kind of question you're asking
20 actually is one that I believe is one that the
21 Commission can address, as long as it does it in
22 cooperation with the other agencies that have the
23 single purpose objectives that fit into that mold.

24 PRESIDING MEMBER LAURIE: Does the
25 Commission have override authority on air?

1 MR. MAUL: That's a very sticky issue
2 that I would rather not answer.

3 PRESIDING MEMBER LAURIE: What's the
4 answer?

5 MR. MAUL: Mr. Chamberlain is behind us.
6 I'd rather have him --

7 (Laughter.)

8 PRESIDING MEMBER LAURIE: Bill, is there
9 a -- do you have an opinion on that question? If
10 you don't, that's okay.

11 Have we, in our history, addressed that
12 question before?

13 CHIEF COUNSEL CHAMBERLAIN: The question
14 of whether we can override on air quality --

15 PRESIDING MEMBER LAURIE: Yes, sir.

16 CHIEF COUNSEL CHAMBERLAIN: --
17 regulations.

18 In general, we have the authority to
19 override state and local regulations. To the
20 extent that air quality requirements have been
21 federalized through the SIP process, we have
22 generally considered that we do not have the
23 authority to override those requirements. But we
24 can, of course, go to the federal government and
25 seek from them a different interpretation or a

1 different way of complying, and that is one of the
2 ways in which our staff tries to -- tries to work
3 these problems out.

4 PRESIDING MEMBER LAURIE: Good. Thank
5 you.

6 Yes, sir.

7 MR. NGUYEN: If I can add some comments
8 to Commissioner Laurie's concerns about the issue
9 of land use and siting, and I think Commissioner
10 Pernell had alluded to the demographics issue when
11 siting these power plants.

12 While the Clean Air Act does not address
13 the issue of land use specifically, new source
14 review does require that an applicant submit a
15 siting analysis in order to get a construction
16 permit. And I guess in this -- in this siting
17 analysis the applicant has to explain, you know,
18 why they chose -- why they chose the location that
19 they chose.

20 The other federal requirement that may
21 have some impact on where a power plant could be
22 sited is the 1994 executive order on environmental
23 justice, and under that executive order we are
24 tasked to ensure that there are no cumulative, you
25 know, impacts, undue cumulative impacts on a

1 community where there's a disproportionate
2 population of low income or minority people.

3 PRESIDING MEMBER LAURIE: Which is a
4 subject of a further workshop, as a matter of
5 fact. Thank you, sir.

6 Mr. Maul.

7 MR. MAUL: Okay. That basically wraps
8 up the presentation we have today with the
9 panelists, for at least their prepared remarks.
10 And I think they're all available here to answer
11 broader questions, or we can --

12 PRESIDING MEMBER LAURIE: Thank you. We
13 do have some requests from the public, so if you
14 folks can just stick around for a minute or two.

15 COMMISSIONER PERNELL: I -- before we do
16 that, I have one question for the -- for the
17 gentleman from CARB.

18 We've had discussions throughout the day
19 about various air districts and -- and depending
20 upon the severity of the air quality in the
21 district they have different rules. And I know
22 under one of the executive orders CARB is looking
23 at peakers. Is there any, in your mind is there
24 any differential between the various air
25 districts, or are we just going with one solid

1 rule for -- for siting peakers?

2 MR. POPPIC: The Air Resources Board
3 participation with respect to peakers is primarily
4 to ensure that local district permits are revised
5 to allow maximum operations, hours of operation.
6 Our participation with respect to siting is not
7 quite as specific. Again, we are more trying to
8 work with CEC to expedite the process, your
9 certification process, to ensure that the maximum
10 number of megawatts gets there as soon -- as soon
11 as you can do it.

12 COMMISSIONER PERNELL: That's
13 understandable.

14 PRESIDING MEMBER LAURIE: Thank you,
15 sir.

16 Dr. Walthers.

17 DR. WALTHERS: Good afternoon,
18 Commissioner Laurie and Pernell. I talked with
19 you a little bit at lunch, and I'm going to make
20 sure that the lady on the right sounds and looks
21 like that she's hearing me, so stay close to the
22 microphone.

23 I want to thank you for this series of
24 workshops. I really think you've done a good job,
25 along with your staff, of organizing them, and I

1 was also at the natural gas constraints one, the
2 first one. So I want to commend you personally
3 for really getting involved in this one. Your
4 line of questioning is extremely important, and I
5 actually think you're in a better position than
6 perhaps you would feel yourself, given the heat of
7 these days on energy.

8 I think between the CEC charter, which
9 we just talked about a little bit, including from
10 your legal counsel, that you -- and I'm trying to
11 put myself in your position, and what -- what
12 would I really want to do with all this --

13 PRESIDING MEMBER LAURIE: I'm not sure
14 you want to do that. Maybe you can wait a couple
15 of years.

16 (Laughter.)

17 DR. WALTHERS: What would you really
18 want to do with all the kind of information you're
19 hearing today? And I believe that you would
20 benefit most from a framework of analyzing and
21 making decisions from that that I'd recommend to
22 you it's called very simply risk based analysis
23 and risk based management. It's been embraced by
24 a number of agencies. It may not be formalized in
25 the CEC. But I believe if you look closely at

1 what the fundamental principles are of risk based
2 management, you're going to find a tool that's
3 going to help you extremely in trying to make
4 these tough decisions that actually, in effect,
5 you do make land use decisions. They're just
6 indirect.

7 But as the CEC and your responsibility
8 to produce and get out electricity, you're making
9 very big social decisions of whether people get
10 rolling blackouts. So when I say risk based
11 management, you have responsibilities that go
12 beyond an example I'm going to give, because my
13 background as an air quality scientist for 30
14 years and doing permitting of major facilities for
15 the last ten, including ERC acquisitions and also
16 health risk assessments, I'm going to use health
17 risk as an example. But you, I'm afraid, will
18 have to address other things like social impacts
19 of lost jobs, rolling blackouts, public safety,
20 you name it.

21 But they all can still be handled in a
22 risk based framework, which is why it's a great
23 way to think your way through this. Let me give
24 an example on health risk. I'm going to really
25 encourage you to be as flexible as possible, even

1 with all the comments you've heard pro and con on
2 offsets and ERCs and where they come from, and how
3 much they are, and how much they can be found.

4 An example is from your own staff
5 report, let's say a plant of 500 megawatts needs
6 100 tons of PM10 per year. That plant then looks
7 for offsets. PM10 is a great example of where,
8 because of exactly what was mentioned earlier
9 today, there are different health effects of big
10 particles versus little particles, whether they're
11 from farm machines, soil, or whether indeed from
12 combustion. And I find that if you were proposed,
13 which is why it's nice now that the actual work is
14 done by the applicant, you don't have to do all
15 the groundwork, you have to just set up the
16 framework.

17 And what the applicant would do, in my
18 mind, is that they'd come to you with, okay, here
19 are some PM10 ERCs we're able to obtain at a
20 reasonable price. We're now going to give you for
21 the rest of our offset requirements basically the
22 reduction of diesel exhaust particulate, which has
23 been mentioned earlier, has an extremely high
24 health risk parameter called the unit risk factor,
25 and in fact, if I now give you the reduction of

1 diesel trucks, as an example, or marine diesels,
2 either one, and I account for the fact that the
3 plant will be there for 30 years and I'm going to
4 work with trucks that are good for perhaps ten
5 years, I'm going to come up with the amount of
6 trucks that I need to get in essence three times
7 the ten year effect. And Steve went through the
8 little bit of that in San Diego. They went
9 through that pattern of thinking.

10 The beauty of it is that when I give you
11 a risk based analysis, which is part of an AFC if
12 it's a full size plant that needs a full AFC, is
13 you will basically have the calculations and
14 background information you need that allows you to
15 show for any doubting Thomas that the reduction of
16 diesel exhaust particulate by this particular
17 program, with this particular record keeping, with
18 this number of trucks, all that kind of thing,
19 that you will get health benefits right now for a
20 power plant that's going to be putting out 100
21 tons of particles per year over 30 years.

22 So you have a variety of things that are
23 now given to you in the analysis that basically
24 support your decision-making, and when you do your
25 decision-making on risk based, I don't think

1 people can argue with it. I don't think
2 politicians -- of course, they'll always give you
3 some hard time -- but aside from politics in a
4 pure sense, people will not be able to assail the
5 basis on which you make those decisions. It
6 allows you now perhaps maximum flexibility of
7 counting all sorts of sources of ERCs. It allows
8 for innovations. It allows for all sorts of
9 engines. You simply are given the data upon which
10 to make a risk based decision.

11 MS. TOWNSEND-SMITH: It sounds good in
12 the ideal world. But as you stated, the
13 Commissioners have to look at a lot of different
14 factors. I mean, we have projects that we can go
15 in and look at the -- the public health benefits
16 and look at the air quality benefits of new
17 projects. But when you have -- look at the
18 socioeconomic aspects of the project, and often
19 the land use aspects, and sometimes incorporate
20 into it the traffic impacts, the community really
21 doesn't want to hear it. Intervenors don't want
22 to hear it. And so even if you have those
23 analysis, a risk based analysis, already provided
24 in the AFC, that doesn't necessarily make the
25 easiest -- you can't make the easiest decision

1 when you have all those factors included in the
2 application.

3 DR. WALTHERS: I understand. It's not
4 -- I understand what you're saying, and it's --
5 there's no guarantee in this. But the beauty of
6 it is anything that can be quantified is
7 quantified. You can't deal with what can't be
8 quantified. And what we're dealing with here is
9 an offset program which, in fact, one of the five
10 requirements in the federal law is that it be
11 quantifiable. So when people see your offset
12 plan, which is required by law, and then they say
13 well, we don't like it because of some other
14 factor, the plant is still going to be near us,
15 and then you ask okay, what's the problem with
16 near you when we are now, in this particular plan
17 that's being proposed -- I'll pick out a
18 situation.

19 A new plant in some place in San Diego.
20 Okay? And this new plant obviously has
21 neighborhoods around it, people who are always
22 going to fight it. Nothing new about that. So
23 when they fight it, they're going to say we don't
24 want it. A power plant puts out pollution. And
25 you say to them we understand that. And, in fact,

1 not only will the emissions of this overall plan
2 go down because of this offset plan, let us point
3 out to you that the diesel reduction of emissions
4 in your neighborhoods and your area because of the
5 actual truck fleets that are being reduced,
6 because these trucks that go by your house,
7 they're not trucks up in Carmel, they're trucks in
8 San Diego, you actually will experience a health
9 benefit because the diesel exhaust particulate
10 from these trucks is far more harmful to you than
11 would be from the power plant.

12 MS. TOWNSEND-SMITH: Trust me. We're
13 there. I mean, we still end up with three, four
14 hundred people at a hearing. You know. And --
15 and you --

16 DR. WALTHERS: Sure.

17 MS. TOWNSEND-SMITH: It still -- you
18 still have -- you're still fighting perception.

19 DR. WALTHERS: You can't get away from
20 the fact that nobody wants a plant near them.
21 Nobody wants a landfill near them. But the CEC,
22 and, in fact, we, as professionals, have a
23 responsibility that goes beyond that. Those same
24 people want their electricity on. And so you do
25 have to find a way, and a tool, and that's all I'm

1 trying to really present, is a tool, a framework,
2 that allows the CEC in a pretty much a logical
3 deductive way to present their case in their
4 decision-making.

5 The things that can't be quantified and
6 are subjective arguments of I don't like, well,
7 that's always going to be there. But at least it
8 doesn't undo the framework that you've got for
9 posing the benefits. Health risk is just a good
10 example of what can be quantified these days.

11 Thank you.

12 PRESIDING MEMBER LAURIE: Do you believe
13 there is sufficient flexibility in CEQA to take a
14 risk based approach?

15 DR. WALTHERS: Oh, yes. In fact, the
16 same ten years I talked to you about, almost all
17 of my projects have had complete EIR's under CEQA,
18 and complete EIS's under NEPA. And under CEQA, it
19 is really clear that when you have potential
20 impacts, which can be quantified relative to
21 ambient air quality standards, health risk
22 standards, you name it, you are required under
23 CEQA to impose all feasible mitigations. The key
24 word is feasible. And so a judgment call has to
25 be made of what's reasonable and what isn't.

1 PRESIDING MEMBER LAURIE: In your
2 experience, is -- are the federal and state
3 standards designed to mitigate air impacts?

4 DR. WALTHERS: Oh, definitely. In fact,
5 one of the most critical parameters that must be
6 passed in a CEQA analysis is that you have to show
7 that the off site impacts of the project will not
8 exceed ambient air quality standards, will not
9 make worse an existing violation, things like
10 that. And so whether it be the federal standards
11 or the more stringent California standards, that's
12 a solid part of the analysis.

13 PRESIDING MEMBER LAURIE: Okay. And
14 then in your experience, where the Energy
15 Commission takes a view that we take federal and
16 state standards and then we do something more if
17 we feel CEQA requires, is that inconsistent with
18 your previous statement?

19 DR. WALTHERS: The CEC may be responding
20 to certain pressures, and my interpretation of the
21 law, not having claim to be an attorney, but
22 having worked with CEQA now for so many years, if
23 you impose all feasible mitigation measures that
24 get you to a level of insignificance as defined by
25 crystal-clear criteria, they're right there in

1 front of you, ambient air quality standards is
2 just an example, health risk standards like
3 carcinogenic risk is another example, once you're
4 below that level by whatever mechanisms were
5 proposed either originally by the applicant or
6 with the help of others to get them tighter, once
7 you're there, then the CEC is taking on its own
8 burden of why they would force the applicant to go
9 further, because CEQA does not require one to go
10 lower and lower and lower below a level of
11 significance. CEQA requires you to do everything
12 you can feasibly get to a level of insignificance.
13 But they don't --

14 PRESIDING MEMBER LAURIE: Not all of
15 your work is in power plants; right? You do --

16 DR. WALTHERS: Power plants, landfills,
17 industrial facilities.

18 PRESIDING MEMBER LAURIE; Okay. Other
19 than power plants, when you work in front of local
20 jurisdictions, and a project brings in consistency
21 with federal and -- federal and state standards
22 through the EIR process, is that deemed CEQA
23 mitigated or do local jurisdictions impose their
24 own CEQA standards, as well?

25 DR. WALTHERS: My experience is that

1 whether it's with your sister agency, the
2 California Integrated Waste Management Board,
3 whether it's the regional water quality control
4 boards, or whether it's air quality management
5 districts, APCDs and planning departments, once
6 you can show you've reached a level of
7 insignificance by criteria that are defined in
8 different subject areas, we're just talking about
9 air today, you're there.

10 Now, they may want you to go further,
11 and the citizens may want you to go further, but
12 there's no legal basis. And, in fact, there's
13 absolutely no legal basis for the agencies to
14 force you to go further, because that's not what
15 CEQA requires. So you're there at that point.

16 Now, a company and a participant in a
17 project may decide to go further from a business
18 viewpoint, because of the way the community talks
19 about it, the way the mayor and the council and
20 supervisors view it, and the question of whether
21 they're going to get approval of three out of five
22 votes. I mean, that's the kinds of things that
23 exist in the real world.

24 PRESIDING MEMBER LAURIE: But when --
25 when we receive a recommendation from Staff to go

1 beyond what we get from the districts in order to
2 meet CEQA compliance, we are in effect saying that
3 district -- the district proposal is not CEQA
4 sufficient.

5 DR. WALTHERS: I'm not here to criticize
6 your staff, of course. And so I'm just telling
7 you that I do not believe in major industrial
8 projects over the years I've worked on them, that
9 there is any such requirement to go further.

10 PRESIDING MEMBER LAURIE: Thank you,
11 sir. Anything else?

12 Okay. Let's go to -- thank you, Dr.
13 Walters, very much.

14 We had a comment from the NRDC rep from
15 this morning. And let me just read it. And I
16 don't know if this is from Ms. Ruderman-Feuer or
17 somebody else.

18 Suggests that ERCs are easily created by
19 retrofitting or closing existing power plants.
20 For example. Could someone from South Coast
21 please discuss the BACT down provision of the
22 offset rules, which seem to state that if you
23 reduce a facility's emissions either through
24 retrofitting or closing that facility, you cannot
25 obtain offsets for the amount of the reduction.

1 You may get offsets for the reduction below
2 current BACT which, for NOx, for example, is now
3 so low that essentially there are no offsets
4 created.

5 Can you respond to that, Mr. Nazemi? Is
6 -- is the question clear?

7 MR. NAZEMI: Yeah, I believe it is, and
8 I'll attempt to respond to it.

9 I think the issue of creation of ERCs is
10 -- is an important aspect with respect to
11 pollutants that are not in a RECLAIM like program.
12 And I caveated that earlier when I said that the
13 power plants in South Coast actually may be able
14 to do everything that Ms. Ruderman-Feuer or NRDC
15 is recommending under their auspices of RECLAIM
16 Program for nitrogen oxides.

17 And the reason that is the case is that
18 the program provided a regional cap to look at
19 overall emissions from a number of sources, 380 or
20 plus, and required that all those sources,
21 including new sources that come into the basin,
22 maintain their emissions overall below a certain
23 cap which was declining through the year 2003.

24 But outside the RECLAIM Program, I think
25 that would become a difficult prospect, and the

1 only way those emissions can be banked as ERCs are
2 if actually plants go over and beyond today's BACT
3 or LAER standards, or practically shut down
4 certain pieces of equipment. And the incremental
5 difference between what BACT is today and where
6 they will be after controlling or shutting down
7 those sources would be the amount of credits that
8 they could bank.

9 We may be revisiting this in the future
10 as part of our overall attempt to address new
11 source review reform. The ex-administration of
12 EPA came out with some recommendations from the
13 NSR reform package that even though it was never
14 finalized and codified into a rule, they wanted to
15 promote agencies and others looking at some of
16 those aspects of it. And as I mentioned earlier,
17 because our -- our district is so severe that we
18 have to have a 1.5 to 1 offset ratio for major
19 sources, part of our negotiated agreement with EPA
20 was that we will require offsets from all sources
21 and we will discount ERCs to BACT levels and all
22 of that, in return for a 1.2 to 1 offset ratio.

23 I think it's not totally out of question
24 to go back and revisit some of those requirements
25 and think of maybe there is a better way to

1 repackage this and negotiate with EPA what would
2 be appropriate in today's environment, given
3 today's energy crisis and other -- other aspects
4 associated with that.

5 But, Commissioner Laurie, I also had two
6 other points that when it's appropriate I would
7 like to be able to comment on.

8 PRESIDING MEMBER LAURIE: Okay. Well,
9 why don't you use that opportunity now.

10 MR. NAZEMI: Okay. I think the question
11 that was asked earlier about risk based approaches
12 and other type of approaches really begs the
13 question are we looking at regional impact or are
14 we looking at localized impacts. And when you try
15 to answer that question, the first thing you need
16 to answer is what kind of pollutant you are
17 looking at.

18 I think for regional pollutants it is
19 quite common amongst all regulatory programs, and
20 it is easier to explain to the public that
21 regional reductions should be sufficient to
22 address regional increases in emissions. But for
23 pollutants that may have specific local impacts,
24 that becomes a more difficult question. And that
25 brings up the issue of environmental justice that

1 EPA brought up, and I think the one possible
2 answer to that is that you would have to look at
3 the emissions impact, or public health impact, and
4 not get bogged down with so much is there a
5 disproportionate impact on the low income and
6 minorities within that area, but really focus on
7 is the impact significant in the first place.

8 If it is not significant, then to go
9 that next step and to decide yes, there is still
10 an unproportionate impact I think might not be
11 appropriate, and especially for areas such as
12 South Coast, where there is a very aggressive new
13 source review toxic program in place to prevent
14 significant toxics impacts to even be brought in
15 on new projects.

16 The second point that I want to make --

17 COMMISSIONER PERNELL: Let me stop you
18 there. When you talk about insignificant, are you
19 talking about health risks or are you talking
20 about the value of property, or how do you
21 quantify insignificant in terms of risk to a
22 community?

23 MR. NAZEMI: I think the EPA's
24 environmental justice program mainly relies on air
25 and public health impacts, and does not get

1 involved so much in property values and things of
2 that sort. So my emphasis is solely on health
3 risk impacts.

4 The second point that I wanted to make
5 was relevant to the earlier discussions we had,
6 how do we prioritize offsets availability or use,
7 or creation and all, and I think, at least in my
8 mind, there's got to be some preferential
9 treatment given to situations where an existing
10 dirty source is being replaced by a new cleaner
11 source of energy. And in those cases, I think you
12 can almost argue with the local residents and
13 everybody else that the outcome overall is
14 beneficial, and therefore it does call for giving
15 some sort of a preference or priority.

16 And on the same vein, then brings us to
17 the next issue, which is environmental dispatch.
18 I think it's real important, and South Coast is a
19 very big advocate of environmental dispatch when
20 it comes to power plants. And what that -- what
21 we mean is that the cleanest plant should be
22 incentivized to run first and provide the power
23 into the grid before the dirtier plants come
24 online. I do realize there is a shortage of
25 supply, so I'm not suggesting that there is

1 abundance of supply. But within the framework of
2 signing agreements through various state or other
3 regulatory agencies for power contracts, or
4 promoting new generation, or somehow controlling
5 repowering of existing, I think the concept of
6 environmental dispatch is somehow lost.

7 If you have that concept in place, then
8 you have your cleanest generating facilities that
9 require the least amount of offsets have an
10 incentive to do that and put on more controls to
11 reduce their emissions, therefore the need for
12 offsets. You also have addressed the issue of air
13 quality, and to the extent that you need the power
14 when you need it, you call your clean plants
15 first, and then once we get to the emergency
16 stage, then bring in your dirtier plants.

17 PRESIDING MEMBER LAURIE: Thank you,
18 sir.

19 Taylor Miller.

20 MR. MILLER: Thank you. I'll be very
21 brief. We've been at this a long time. I've just
22 been taking some notes and I'd like to make a few
23 points.

24 I'm currently involved in looking for
25 offsets for a number of projects, and have done

1 that in the past on behalf of the proponents. And
2 I just wanted to make sure that at the end of the
3 day you do still have the impression that yes, we
4 do have a problem. There are some areas that have
5 larger offset availabilities than others, but I
6 can tell you that there are applications that I
7 have worked on that have been delayed by
8 significant amounts of time just because of
9 looking for offsets.

10 I also would like to re-emphasize that
11 if you look at the numbers of credits in banks,
12 you've got to consider also that while the credits
13 might be there, they may not be for sale at any
14 price. And further, that even if they are there,
15 you've got the EPA RACT adjustment upon use policy
16 to deal with, so that the amount that's there may
17 be far less in reality when it's actually used, if
18 it could be purchased.

19 So I just wanted to re-emphasize we do
20 have an issue, and at least some places, including
21 both southern California and northern California,
22 in my experience, coming to your issue of plants
23 being located in the urban areas, I think we've
24 got to recognize that that is probably -- and I'm
25 not an electrical engineer, but a good policy, at

1 least in some sense. And that's where the people
2 are, and that's where the cars and the trucks are.
3 And in many cases in California there really isn't
4 a lot of industry there besides that.

5 So the -- the universe we're dealing
6 with of emission sources in some areas, such as,
7 for example, in Sacramento, really is cars and
8 trucks, in large part. And the stationary sources
9 may have been largely already addressed. Now,
10 that's not to say that there isn't some out there,
11 and there's a lot of searching going on to find
12 those opportunities for refit, retrofits.

13 So while I -- I know that there has been
14 good points raised that with MERCs, mobile source
15 to stationary source trades raise issues of time,
16 quantification, et cetera, et cetera, I would just
17 urge that you keep that on the table and that
18 efforts be made collectively to see if we can work
19 through those problems.

20 So that's my two points I'd like to
21 make.

22 PRESIDING MEMBER LAURIE: Thank you, Mr.
23 Miller.

24 COMMISSIONER PERNELL: Let me just
25 assure you that we do know that there's a problem.

1 Given the work that Staff is doing and the types
2 of briefings that we've been doing to various
3 entities, we know that there's a problem.

4 MR. MILLER: I didn't really doubt that
5 too much. Thank you.

6 PRESIDING MEMBER LAURIE: Ms. Simon, did
7 you want to have somebody else?

8 This is Communities for a Better
9 Environment.

10 MS. PEESAPATI: Yes.

11 PRESIDING MEMBER LAURIE: Good
12 afternoon.

13 MS. PEESAPATI: Good afternoon.

14 PRESIDING MEMBER LAURIE: Could we have
15 your name, please.

16 MS. PEESAPATI: Sure. My name is Suma
17 Peesapati. I'm with Communities for a Better
18 Environment.

19 I was -- I was very pleased to hear that
20 there is an environmental justice workshop being
21 planned. Is that correct, did I hear correctly?

22 PRESIDING MEMBER LAURIE: There is a
23 workshop on local issues, and it will include a
24 discussion of environmental justice.

25 MS. PEESAPATI: Okay. I'm very pleased

1 to hear that, because that really is the theme
2 behind my very brief comments.

3 CBE's fear is that this issue of the
4 energy crisis is actually threatening a potential
5 environmental justice crisis. And I think a lot
6 of the issues that were brought up today relate to
7 environmental justice, specifically siting issues.
8 You know, we talk about siting facilities in load
9 centers. Well, we also have to look at where the
10 industrial locations are in those centers. And
11 those tend to be in low income communities of
12 color. And that's true throughout the state.

13 Also, when we talk about mobile to
14 stationary source trades, I mean, they're legal.
15 But under the federal Clean Air Act, mobile to
16 stationary source trading is legal. But there's
17 also a policy issue that relates to environmental
18 justice with mobile to stationary source trading.

19 Yes, it's true that a lot of the
20 communities that are housing large numbers of
21 stationary sources are also suffering from
22 exposure to mobile sources. But the reality is
23 mobile sources are everywhere. And when you use
24 reductions from a large geographic area,
25 reductions that are equally distributed amongst a

1 population, and you use that to justify specific
2 increases in concentrated areas, that's a policy
3 problem.

4 Secondly, there is also another
5 underlying policy behind the federal Clean Air
6 Act's restraint of -- of the -- of credits being
7 generated from stationary sources, and that is
8 because pollution credit programs are economic
9 incentive programs. If the price of credits
10 cannot be maintained at some healthy level, there
11 is no incentive to find innovative ways to reduce
12 pollution. That is the point of pollution credit
13 programs, to find innovative ways to reduce
14 pollution.

15 So to the extent that you expand
16 programs to include mobile credits to artificially
17 drive down the price of credits, you are
18 eliminating that incentive.

19 One more issue regarding siting
20 restrictions based on toxic pollution. Some of
21 the major types of pollution that we're concerned
22 about in regards to power plants are nitrogen
23 oxides and particulate matter, PM10. Those aren't
24 considered toxics, from my understanding of -- of
25 district rules. So those aren't -- those types of

1 pollution aren't affected by restrictions based on
2 toxic chemicals.

3 So that's the main gist of -- of what I
4 wanted to say. And, again, I'm very pleased to
5 hear that there will be a further discussion on
6 EJ.

7 PRESIDING MEMBER LAURIE: Thank you,
8 ma'am.

9 COMMISSIONER PERNELL: Thank you.

10 PRESIDING MEMBER LAURIE: Anybody else?
11 Mr. Chamberlain.

12 CHIEF COUNSEL CHAMBERLAIN: Yes. I
13 think this has been an excellent workshop.

14 I was struck by the fact that it seemed
15 as if we were discussing all this morning and this
16 afternoon an elegant regulatory scheme that is
17 driving toward obviously a goal that we all want,
18 clean air and public health and safety. But it
19 appears that we're entering into a new time in
20 which we may have to make some choices that are
21 difficult.

22 One of the things that concerns me about
23 what I heard this morning was it sounded, and
24 perhaps I misunderstood, but it sounded as if
25 every one of the air districts has some threshold

1 level below which they don't regulate. And if
2 that's the case, then I think that as we enter
3 into a period in which there may be substantial
4 periods of lack of availability of electricity, we
5 could wind up with a very difficult choice here.

6 Let me give you a scenario that I think
7 we may be facing within the next few weeks. There
8 is a shortage of turbines that can produce the
9 kind of NOx that we like to see, at or below five
10 ppm. And so some of the parties that may come to
11 this Commission and ask for emergency siting of
12 peaking facilities may come to us with turbines
13 that we normally would not want to -- to site.
14 They may have emissions of, say, 25 ppm.

15 If the answer that we have to give them
16 is that doesn't meet our requirements, or we can't
17 give you adequate offsets for your 25 megawatt
18 facility, and the result is extensive periods of
19 blackouts, I believe that what will happen is that
20 many members of the public will decide that they
21 simply cannot tolerate the blackouts and they will
22 go and they will buy their own five kilowatt
23 gasoline or diesel fired generator. And if we
24 have 5,000 of those coming online instead of that
25 25 megawatt project, it doesn't take very many

1 hours before we've made a very bad bargain.

2 So I think that's the challenge that
3 faces us all now. And I don't know whether the
4 air agencies could even practically try to control
5 those five kilowatt generators, but if they can't,
6 then it seems to me that there's quite an Achilles
7 heel in the regulatory scheme that we've been
8 talking about.

9 PRESIDING MEMBER LAURIE: Thank you,
10 sir.

11 Anybody desire to comment? If there's
12 no additional comment, Commissioner Pernell --
13 yes, sir.

14 MR. POPPIC: Commissioner, I'm sorry.
15 George Poppic again. I think now I'm addressing
16 you more as an attorney who's practiced in land
17 use and environmental law for over 20 years than a
18 counsel for ARB.

19 Both this morning and this afternoon in
20 the context of discussing CEQA, you've asked the
21 question what do I do when Staff is bringing me a
22 proposal that takes me beyond basically what has
23 been required by an air district. And I think
24 it's important that you understand districts are
25 fairly well constrained in what they can and

1 cannot permit.

2 Let me give you an example.

3 Preconstruction emissions, offroad emissions.

4 These are things that a district cannot take into
5 account when they permit a stationary source.

6 Nevertheless, those emissions can be substantial,
7 and it is not only a possibility but I feel a
8 duty, under CEQA, to take those emissions and to
9 account when you are mitigating the project as a
10 whole. So it is -- it is very -- my concern is to
11 equate mitigating to insignificance with having a
12 district fully permit the air quality aspects of a
13 project.

14 It is one thing to look at a district
15 regulatory structure in terms of ascertaining
16 levels of significance. If I don't trigger
17 offsets, do I have a project that has a
18 significant adverse air impact. That's one issue.
19 But it is an entirely different issue to say well,
20 because the district has completed its permitting
21 process I have therefore done everything I can. I
22 have taken all feasible mitigation measures with
23 respect to the air impacts. That is not always
24 true, because, again, of the limitations of the
25 scope of district regulations.

1 So I --

2 PRESIDING MEMBER LAURIE: Very helpful.

3 Thank you very much.

4 Okay. With that, Commissioner Pernell,
5 do you have any closing comments?

6 COMMISSIONER PERNELL: Well, I'd like to
7 thank the panel that -- both the morning and
8 afternoon. I think it was great discussion. You
9 know, these types of dialogues are very helpful to
10 us as Commissioners. Also, Staff for putting this
11 together, and all of you out there who have
12 stayed. You had a 20 minute lunch, and -- and
13 back here to discuss issues that are of -- of
14 grave concern for the state.

15 So we have other workshops scheduled,
16 and I'm sure you will find the schedule outside.
17 And I want to take the opportunity to thank my
18 colleague here for coming up with these workshops,
19 and this idea. But it's very informative. It's
20 informative to me. I will take all of the
21 suggestions and comments and do a in depth thought
22 about -- some in depth thought about the effects
23 it has on individual stakeholders, air districts,
24 agencies, and particularly us.

25 So thank you again for being here, and I

1 look forward to seeing you at the next one.

2 PRESIDING MEMBER LAURIE: I'd just like
3 to echo Commissioner Pernell's comments.
4 Throughout these workshops we have heard the most
5 impressive presentations from ladies and gentlemen
6 like yourselves, who are knowledgeable, competent
7 and articulate, and it's been a wonderful
8 education which, if we do our job right, we will
9 share with others within this building.

10 Mr. Maul, did you have a comment?

11 MR. MAUL: I just wanted to add to your
12 comments and express my personal appreciation for
13 the members of our panel who have come here. This
14 is an extremely busy time for all of them, because
15 of the situation we're in. They have very hectic
16 schedules, and I know a number of you have had a
17 chance -- had a need to move your schedules around
18 to meet today's hearing schedule. We very deeply
19 appreciate your attendance and comments today.

20 PRESIDING MEMBER LAURIE: Yeah, but they
21 got a chance to be on the Internet. Hey, that's,
22 you know, that's good.

23 (Laughter.)

24 PRESIDING MEMBER LAURIE: Ladies and
25 gentlemen, the meeting will be adjourned, and our

1 deep thanks.

2 Thank you very much.

3 (Thereupon the Workshop was
4 concluded at 4:04 p.m.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Workshop, not in any way interested in the outcome of said Workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of February, 2001.

VALORIE PHILLIPS

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